

**BEFORE THE MONTGOMERY COUNTY
BOARD OF APPEALS
Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660**

**IN THE MATTER OF:
SUNRISE DEVELOPMENT, INC. d/b/a
SUNRISE SENIOR LIVING**

Petitioner

Mike Parsels

Steve Ruiz

Kevin Foster

Seth C. Churchill

Mike Workosky

For the Petition

Cynthia Bar, Esquire

Robert R. Harris, Esquire

Attorneys for Petitioner

* * * * *

Martin Klauber, Esquire, People's Counsel

In Support of the Petition

* * * * *

John and Janet Ring

Norman Knopf, Esquire

Attorney for the Rings

In Support of the Petition

* * * * *

Mary Clare Roeder

Allen J. Abel

Community Participants

in Opposition

* * * * *

Before: Martin L. Grossman, Hearing Examiner

[illegible]

Board of Appeals Case No. S-2712
(OZAH Referral No. 08-08)

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. STATEMENT OF THE CASE

Petition No. S-2712, filed on August 9, 2007, seeks a special exception pursuant to §59-G-2.27 of the Zoning Ordinance, to build and operate an assisted living facility (labeled a “domiciliary care home” in the Zoning Ordinance) with 74 units and up to 94 beds on the north side of Olney-Sandy Spring Road (Maryland Rt. 108), between Prince Phillip Drive and Old Baltimore Road, in Olney, Maryland. This five-acre site is described as Parcel 359 in Map HT562 (Tax account No. 08-03105110), and is zoned RE-2/TDR (2-acre residential zone with transferable development rights).

On August 28, 2007, the Board of Appeals issued a notice scheduling the hearing for January 14, 2008 at 9:30 a.m. before the Office of Zoning and Administrative Hearings (Exhibit 14). The petition was amended three times by Petitioner (Exhibits 20, 22 and 25), and notices of the amendments were forwarded to interested parties as required (Exhibits 21, 23 and 27). There was no opposition to the amendments, but opposition letters were filed by four households in the general neighborhood (Exhibits 17, 28, 30 and 31). These letters raised concerns about traffic, environmental impact, property values, compatibility and excessive concentration of similar uses.

Technical Staff, in a memorandum dated December 21, 2007, recommended approval of the petition, on certain conditions (Exhibit 24). On January 3, 2008, the Planning Board unanimously recommended approval of the special exception, but expanded the time permitted for deliveries and trash pickups that had been recommended by the Technical Staff in proposed condition #3 (Exhibit 29).

A public hearing was convened, as scheduled, on January 14, 2008. Five witnesses were called by Petitioner, and two neighbors, Allen J. Abel and Mary Clare Roeder, both of whom had had filed letters expressing their concerns (Exhibits 28 and 30), testified in opposition. Both live on Shotley Bridge Place, approximately 324 feet from the closest corner of the proposed structure. The neighbors who live closest to the site (*i.e.*, the adjacent property, about 150 feet to the west of the proposed structure), John and Janet Ring, were represented by attorney Norman Knopf at the hearing.

Mr. Knopf announced that the Rings had worked out an agreement with Petitioner, and they now supported the petition. Martin Klauber, the People's Counsel, also supported the petition, and recommended some modifications to the proposed conditions.

To carry out their agreement with the Rings, Petitioner asked that the record remain open until January 25, 2008, so that minor modifications could be made to their plans, and the revised plans filed, along with additional materials concerning operations, lighting and noise. The record was held open for that purpose, and Petitioner submitted the revised materials (Exhibits 45(a) through (p)) on January 25, 2008. A few days before the record closed, a letter was received from "The Management Group," on behalf of the Lake Hallowell Homeowners Association, expressing concerns about the proposed special exception (Exhibit 43). Petitioner responded to this letter on January 25, 2008 (Exhibit 44).

The record closed, as planned, on January 25, 2008;¹ however, it was reopened on the joint request of Petitioner and the Rings solely to correct some form problems with the revised plans, and to receive any commentary thereon from the parties of record and Technical Staff. The revised plans (Exhibits 52(a) – (h)) were received on February 1, 2008, and the record closed again on February 15, 2008, after a ten-day comment period. Technical Staff approved the revisions (Exhibit 55). The record had to be reopened again to receive a corrected photometric display (Exhibit 56) and a Summary Statement of Operations (Exhibit 57(a)), closing finally on March 6, 2008, after another 10-day comment period. During the comment period, only Mrs. Roeder filed an additional comment (Exhibit 59).²

The concerns of the community are discussed in Part II. G. of this report. As will appear more fully below, in spite of those concerns, the record amply supports the granting of this petition.

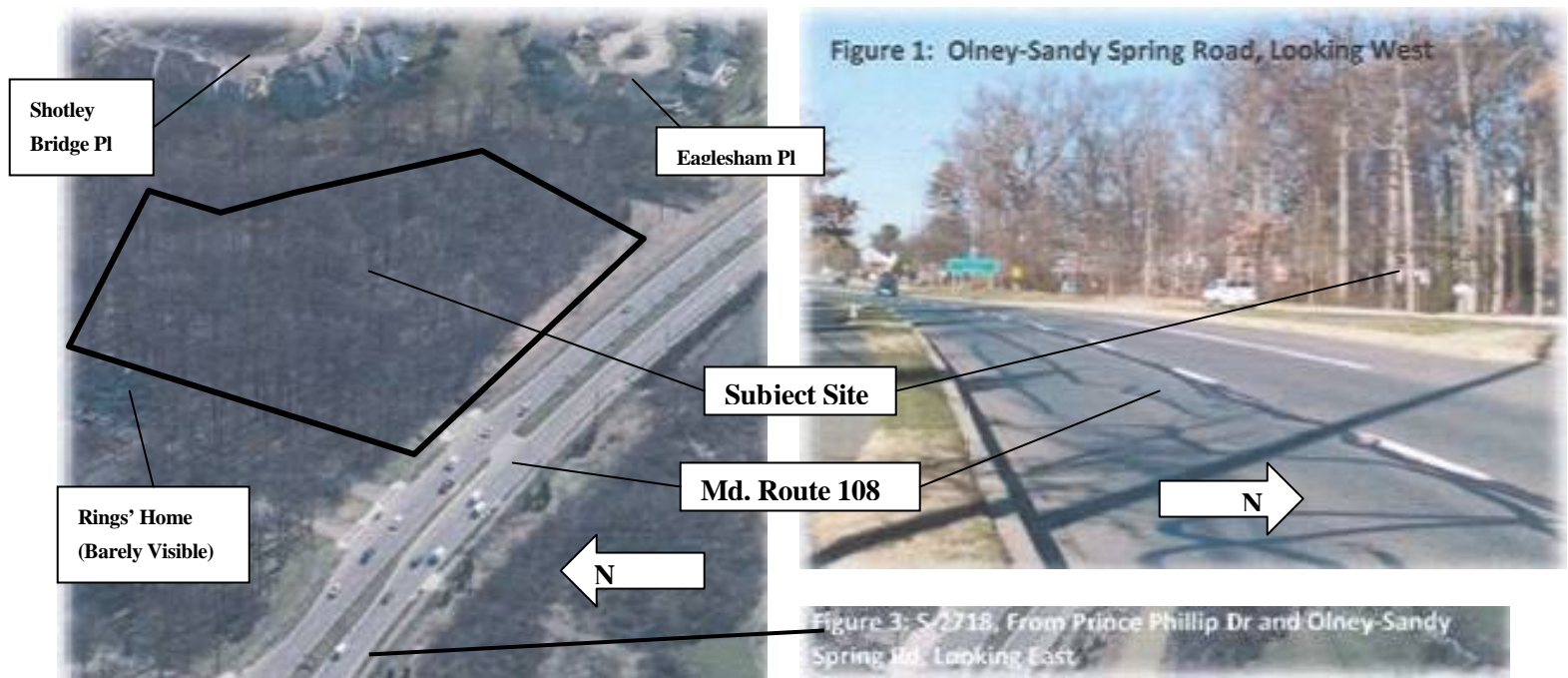
¹ Six opposition letters, dated January 25, 2008, were faxed to OZAH on January 29, 30 and 31, 2008 (Exhibits 46 through 51), after the record was initially closed. They are identical, except for the names and addresses of the senders. Although they were received after the record was closed, these new letters were received into the record because the record was reopened to receive revised plans. However, these letters do not provide any new basis for evaluating the petition, but rather restate grounds for opposing the petition that are already before the Hearing Examiner in other, timely received, opposition letters.

² Mrs. Roeder's comment reiterated her objection to the timeframes suggested by the Planning Board for deliveries to the site.

II. FACTUAL BACKGROUND

A. The Subject Property

The subject property consists of 4.892 acres of unimproved land located on the north side of Olney-Sandy Spring Road (Maryland Rt. 108), about a half mile east of its intersection with Prince Phillip Drive, in Olney, Maryland. The site is described as Parcel 359 in Tax Map HT562, and is zoned RE-2/TDR. Technical Staff describes the lot as forested, but it is not in a special protection area, and there is no existing forest conservation easement on the property. Tr. 55. The topography gently drops in elevation from Olney-Sandy Spring Road north towards the property's rear. The site has approximately 520-feet of frontage along Olney-Sandy Spring Road, and there is a curb cut and a partially built driveway entrance on its frontage. This curb cut and entrance, as well as a left-turn cut in the median on Olney-Sandy Spring Road, will be used for site access. This property has not been subdivided, and a preliminary plan is required, under Chapter 50 of the Montgomery County Code. Photographs of the site and immediate surroundings were included as Attachment 5 to Technical Staff report (Exhibit 24):³

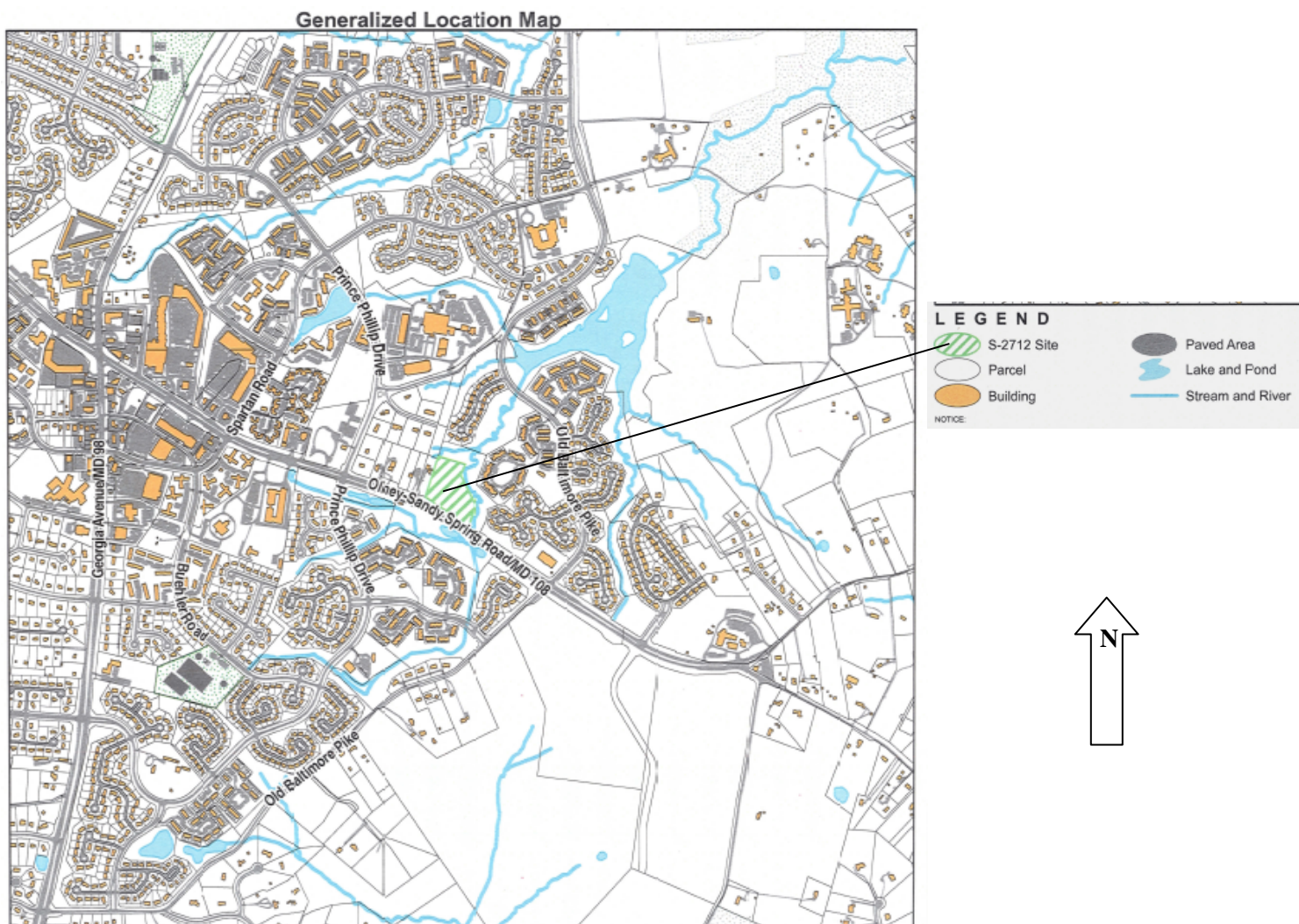


³ The Technical Staff report is frequently quoted and paraphrased herein.

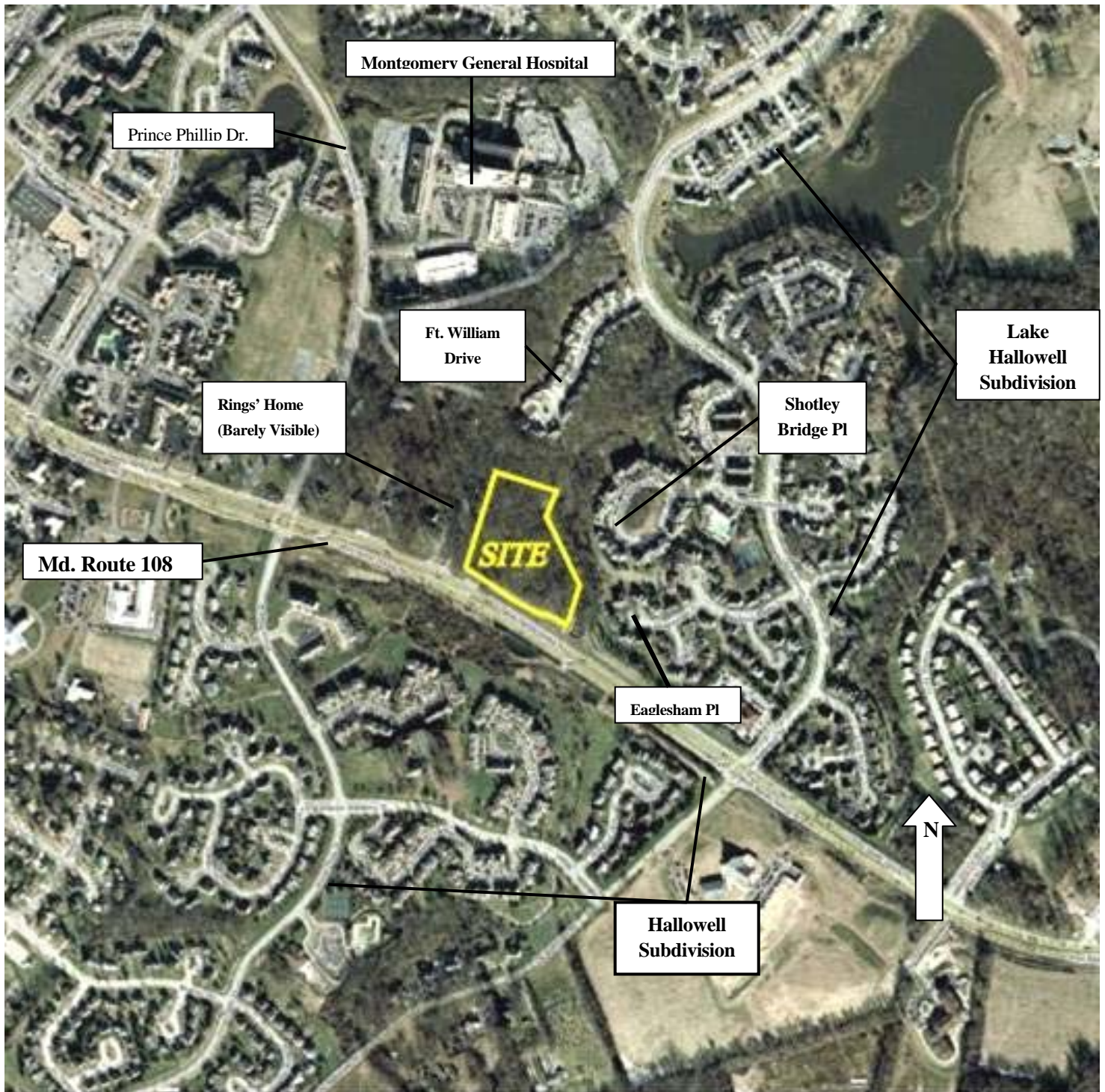
According to the testimony of Petitioner's land planner, Kevin Foster, there is a tributary on the east side of the property that runs north to Lake Hallowell. There is also a small tributary to the north end of the property that also runs to Lake Hallowell, and these two tributaries and their associated stream buffers create an environmental buffer between the subject property and the existing residences in that area. The closest home, the Rings' residence, is immediately to the west of the subject site, and its patio actually extends onto Petitioner's property. Petitioner has agreed to grant them an access easement, and that agreement has been incorporated into a condition recommended in Part V of this report.

B. The Neighborhood and its Character

The general location of the subject site is readily seen in the map appended as Attachment 1 to the Technical Staff report:



The surrounding area was well described by Mr. Foster at the hearing, using an aerial photograph, Exhibit 36:

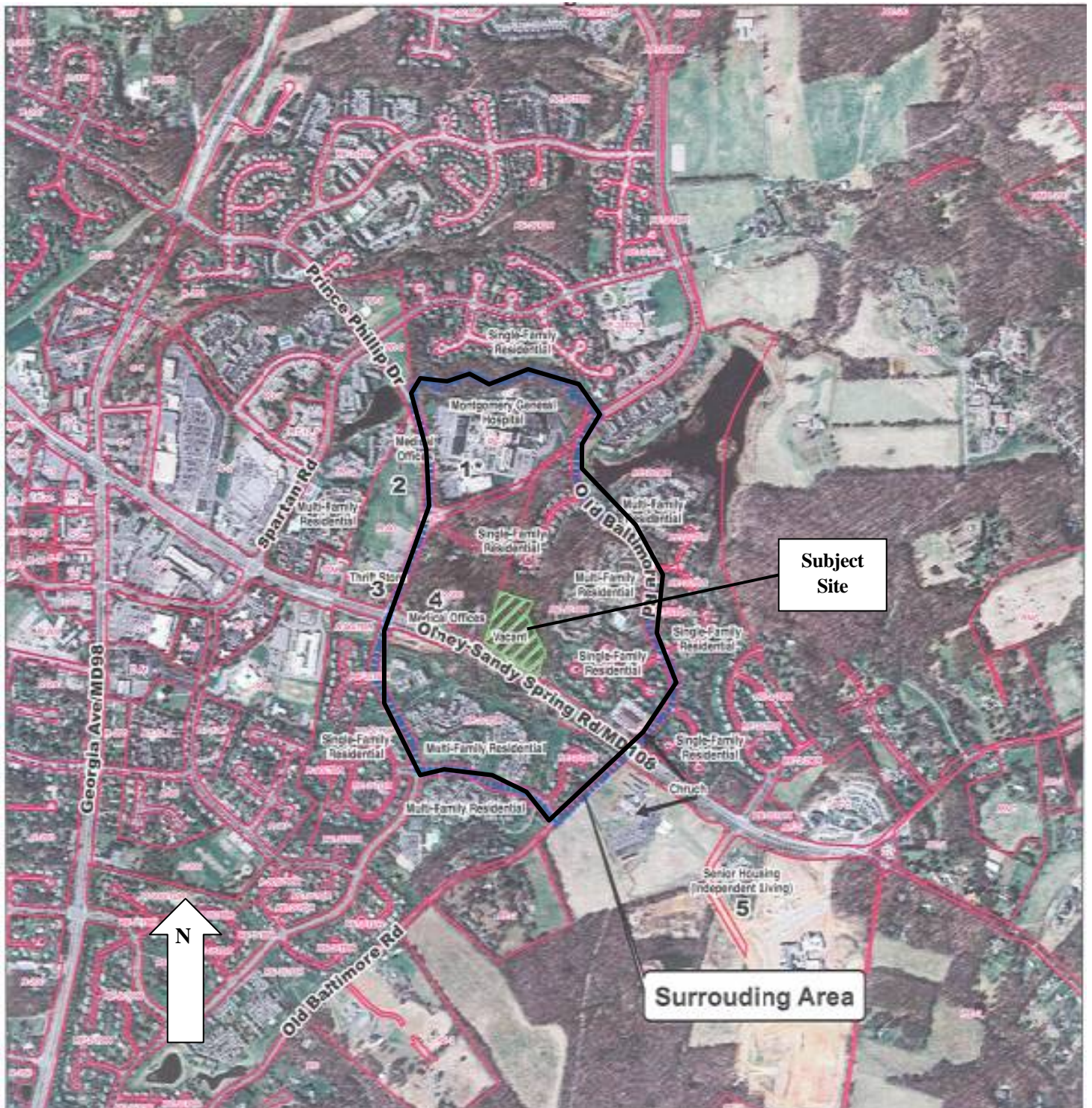


The subject property is located on the north side of MD Route 108, east of Georgia Avenue and east of what is considered to be the edge of Olney Town Center. To the north of the subject property is Montgomery General Hospital. Also there are several residential subdivisions close to the subject property. To the northeast and to the south are the Lake Hallowell and Hallowell subdivisions, which contain a combination of single-family and townhouse uses. Hallowell is to the south of the site, across Route 108, and Lake Hallowell is to the northeast of the site. To the west of the subject property, there is a neighborhood of older houses that sit back around Route 108 in a relatively heavily forested area. There are three residential streets that abut the subject property in the Lake Hallowell subdivision. They are, Fort William Drive, to the north, which has single-family, detached houses; Shotley Bridge Place to the east, and it has townhouses; and Eaglesham Place, to the southeast, which has single-family, detached houses. There is also a homeowners association (HOA) open space parcel between the subject property and the abutting properties in the Lake Hallowell subdivision, so the subject site does not actually directly abut the houses to the north and the east.

On the opposite (south) side of Route 108, in the Hallowell subdivision, there are townhouses. Between those townhouses and Route 108, there is also an HOA open space parcel.

Technical Staff defined the general neighborhood to include those properties within about ¼-mile of the proposed site, but stretched the covered area to the north to encompass the entire Montgomery General Hospital campus. Under cross-examination by the People's Counsel, Petitioner's land planner, Kevin Foster stated that he would have excluded the Montgomery General campus because it has little linkage to the subject site. Tr. 94. The Hearing Examiner finds that it does not make a difference to the outcome of this case, whether or not the Montgomery General campus is included in the defined neighborhood; however, he accepts Technical Staff's inclusion of the campus because it is the dominant institutional use in the surrounding area, part of its campus is within ¼ of a mile from the

subject site, and excluding it might give the misimpression that the area near the subject site is entirely residential. Technical Staff's map of the general neighborhood, which was appended as Attachment 7 to its report, is reproduced below:



As can be seen, the general neighborhood is bordered by Prince Phillip Drive on the west, the northern extremity of Montgomery General Hospital to the north, Old Baltimore Road to the east and Prince Phillip Drive and Academy Drive to the south. Within the neighborhood are single and multi-family residential dwelling units and Montgomery General Hospital. Additionally, the Winter Grove Adult Day Care facility, a thrift shop and two churches are located nearby. A perimeter landscape berm exists along the edge of the Hallowell subdivision which shields the existing residential subdivision from the subject site. Adjacent zoning is RE-2/TDR to the north, south and east, and R-200 to the west.

The nearest dwelling unit to the proposed assisted living facility is the Rings' house, which is approximately 150 feet away from the proposed building. Its location and the distances from the proposed building to other nearby residences are shown in Exhibit 45(m), which is reproduced below:



C. Proposed Use

Petitioner proposes to construct a three-story, 74-unit, assisted living facility for seniors. It will have up to 94 beds and will operate 24 hours a day, seven days a week. The number of employees on site at any given time will not exceed thirty. It is anticipated that the staff will work in three shifts (7:00 AM to 3:00 PM, 3:00 PM to 11:00 PM, and 11:00 PM to 7:00 AM); however, staff will arrive at staggered hours between 7:00 AM and 9:00 AM to minimize disruptions. On-site security will be provided through the use of a “resident concierge manager” during business hours, and admittance will be electronically controlled by a staff member after the evening meal. Each of the care managers carries some wireless system which can identify residents if there’s an emergency.

Petitioner, Sunrise Development, Inc. d/b/a Sunrise Senior Living, is a large operator of facilities for senior citizens. According to Mike Parsels, Director of Real Estate with Sunrise Senior Living, Sunrise’s approach is to design their facilities as residential settings, inside and out, “with the comforts of home.” Tr. 21. Sunrise feels that residential style architecture can enhance the quality of life for both residents and staff. “Great assisted living combines very high quality care with high quality architecture. Our goal is to create exteriors and interiors with a manor house look and feel offering the comforts of home.” Tr. 23. The company has received several awards for excellence in design and architecture because of its approach.

Mr. Parsels identified photographs showing typical exteriors and interiors of Sunrise facilities (Exhibits 35(a) through (i)). They are reproduced on the following pages. Outside there is an emphasis on lawn and landscaping, trees, flower beds, enclosed gardens, a walking path that loops around the building, bird feeders, benches, low intensity lighting, a gazebo and wrap around porches. All sides of every Sunrise building are residential in scale and finish.

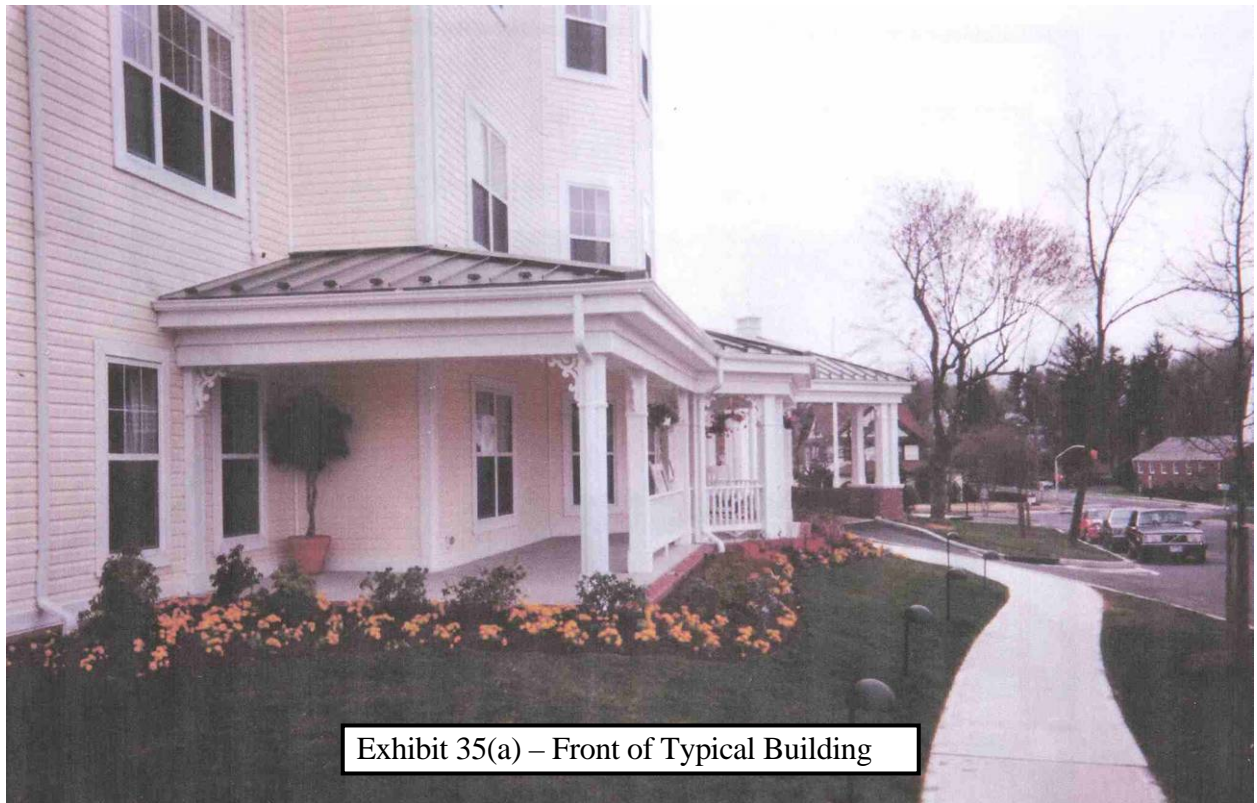


Exhibit 35(a) – Front of Typical Building

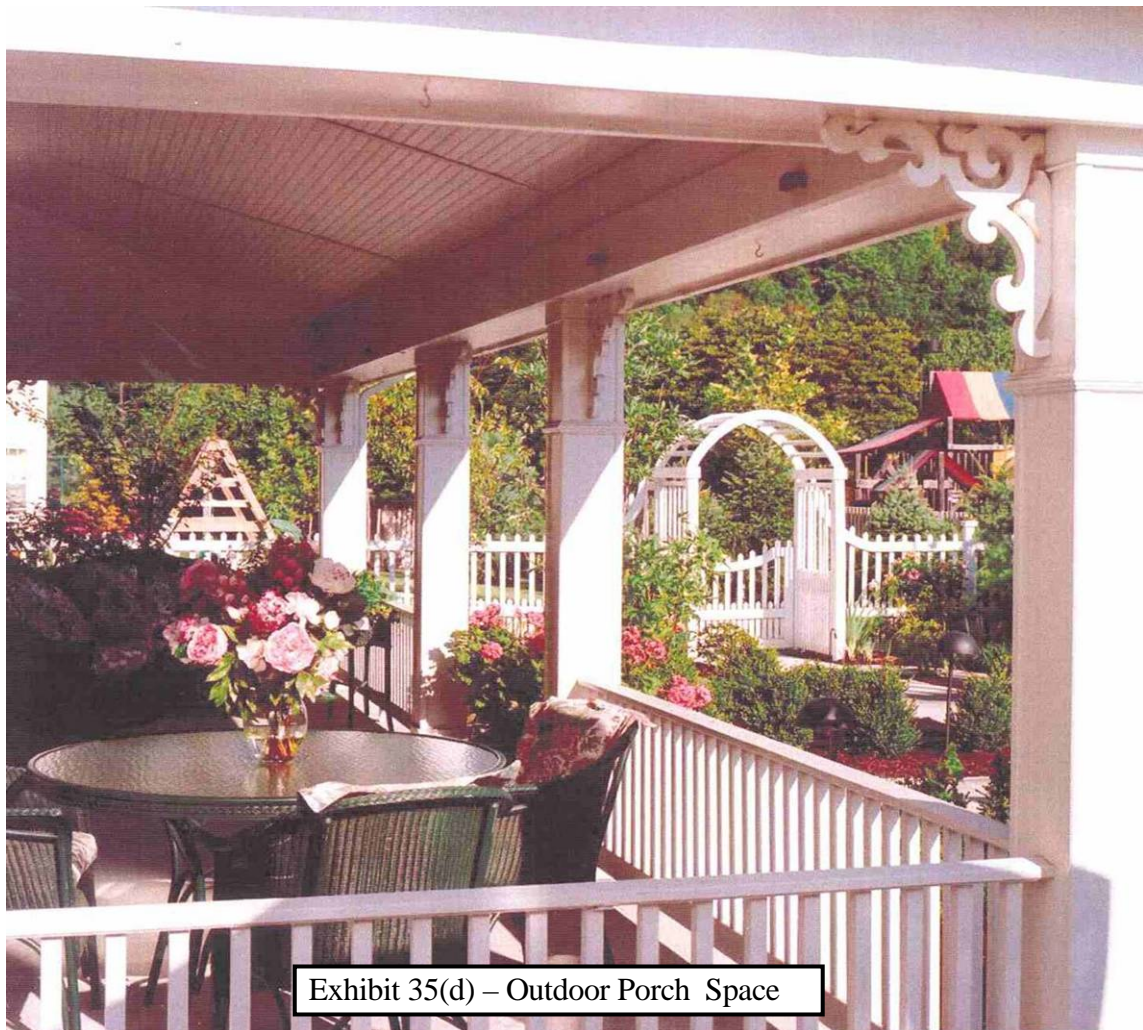


Exhibit 35(d) – Outdoor Porch Space

Inside there are fresh cut flowers, and rooms designed to be sunny, small, and comfortable, but with approximately 40 percent common area. There are small conveniences near the front door, a twenty-four hour bistro snack bar with a juke box, a formal dining room, three meals a day, provided in two seatings, a dining room, a theater and activity room with a full-time activities director and state-of-the-art elements such as wireless phone systems.



Exhibit 35(f) – Grand Foyer



Exhibit 35(h) – Living Room



Exhibit 35(g) – Bistro

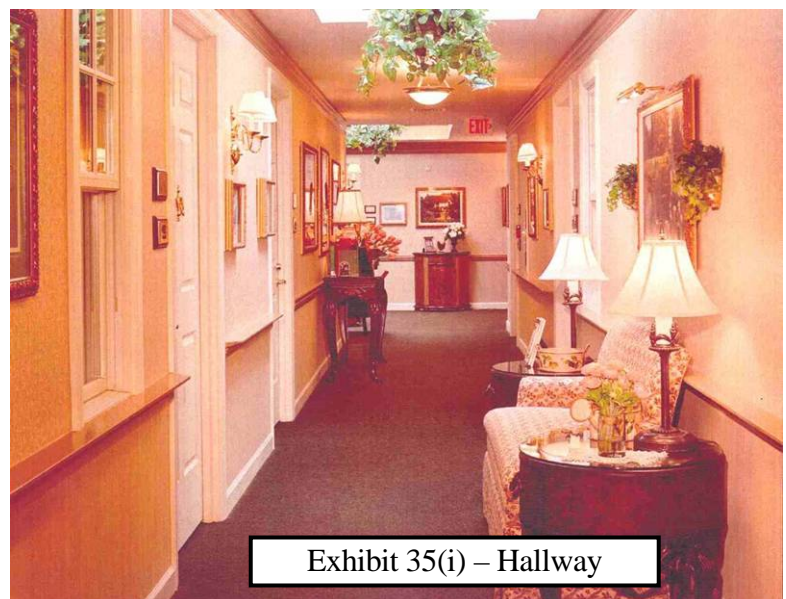


Exhibit 35(i) – Hallway

There is also a diversity in unit sizes. Within the proposed building, there will be 74 units, but there will be as many as nine different styles of unit types and programs for residents with memory disorders such as Alzheimer's or dementia, so that residents can age in place. Sunrise buildings, as the industry goes, are small, with 70 to 80 units, compared to 120 to 130 for a competitor.

The building will be designed to look like a "Victorian-style farm house," with a *port cochere* in front. According to Petitioner's architect, Steven Ruiz, the Victorian style is used because it fits in almost anywhere, and the styles and cladding of the windows are adjusted to what is best suited to the neighborhood. He noted that the traditional Victorian farmhouse is very common in this area. The proposed building will consist of three floors, with a maximum proposed height of 43'-5" (to the midpoint of the roof) and a proposed maximum of 64,000 square feet of floor space. The architect's concept of the proposed structure is shown in two renderings, Exhibits 10(b) and 42. The first, Exhibit 10(b), below, shows the proposed building in its forested setting.



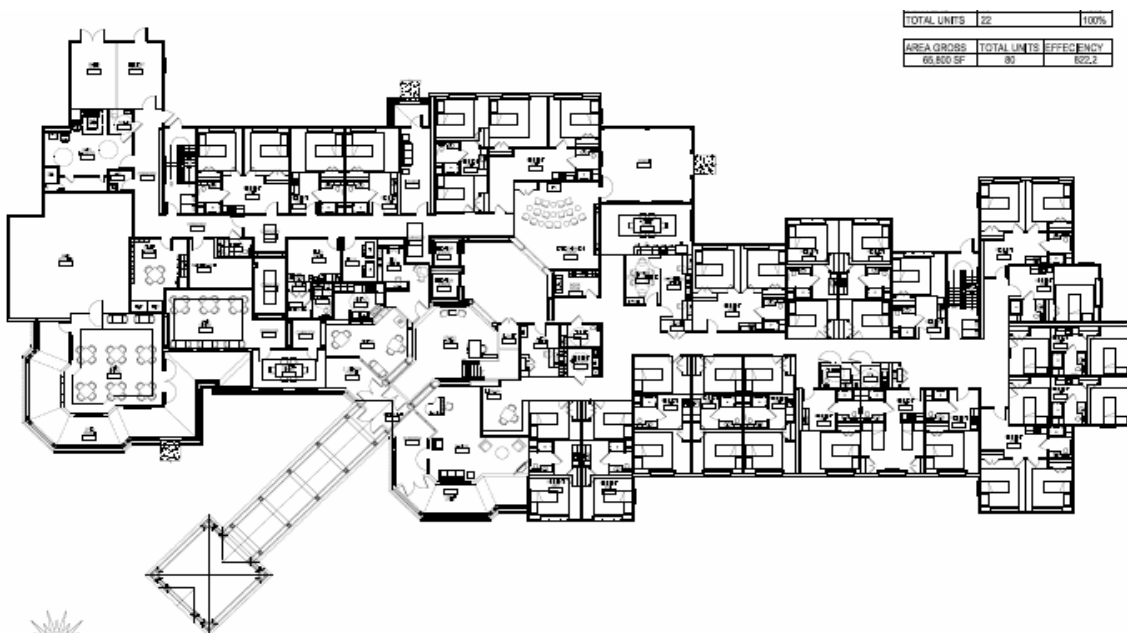
The second rendering, Exhibit 42, which is shown on the following page, demonstrates the architectural features intended to make this building compatible with the residential neighborhood, as explained at some length by the architect, Steve Ruiz. These include a design in which the building juts

in and out, so that one never sees the whole building at one time. The siding sizes and styles are varied in bands, and the windows are varied in size to break up the view. A porch is included as an inviting feature and the *port cochere* protects elderly residents who take longer to move in and out.



The proposed building is one of several model types used by Sunrise, called the “T” building.

Its overall shape can be seen on the following illustrative first-floor plan (Exhibit 19(a)):

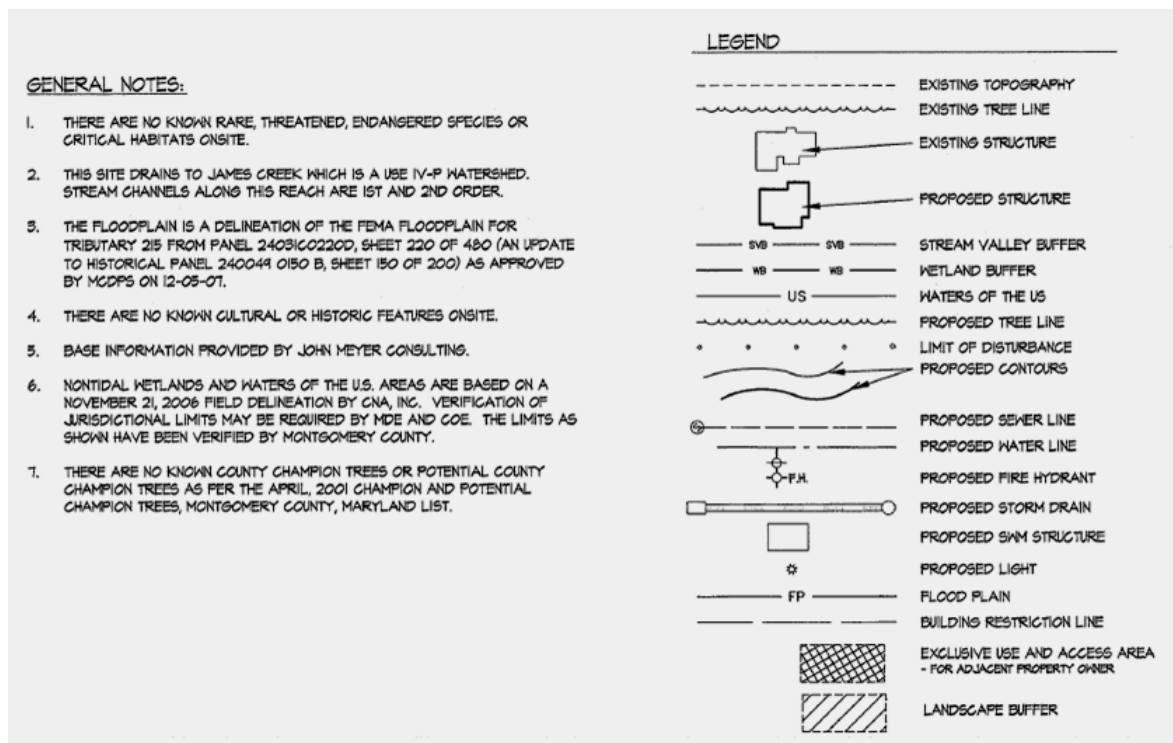


The revised site plan (Exhibit 52(b)), shows details of the proposed development:



As can be seen on the site plan, all of the parking (45 spaces) will be located to the side and rear of the building, on the west side of the site. A landscape buffer, including a retaining wall and vinyl

privacy fence, to protect the nearest neighbors, the Rings, is demarcated on the plan with hatch marks along the western property line. An area of cross-hatching, also on the western property line, shows the area over which the Petitioner has agreed to grant exclusive access and use by easement to the Rings, as set forth on pages 11 and 12 of Petitioner's revised Statement of Operations (Exhibit 52(a)). Notes and other data from the revised site plan are shown below:



DEVELOPMENT STANDARDS

DESCRIPTION	REQUIRED	PROVIDED
MINIMUM LOT AREA (SQUARE FEET)	112,800 SF	~213,092 SF
<ul style="list-style-type: none"> • THE MINIMUM LOT AREA IN THE RE-2 ZONE MUST BE 2 ACRES OR 1,200 SQUARE FEET FOR EACH BED, WHICHEVER IS GREATER. • PROPOSED: 74 UNITS @ 44 BEDS, THUS (44 BEDS x 1,200 = 112,800 SF > 2 ACRES x 43,560 = 87,120 SF). 		
MINIMUM LOT WIDTH (FEET)		
AT FRONT BUILDING LINE	150' (SFD)	520'
AT EXISTING STREET LINE	25'	525'
YARDS (FEET)		
MINIMUM BUILDING SETBACK FROM STREET	50'	58'
MINIMUM BUILDING SETBACK FROM ADJOINING LOT:		
ONE SIDE	20'	102' ±2'
SUM OF SIDES	40'	244' ±4'
REAR	35'	222' ±2'
MAXIMUM BUILDING HEIGHT (FEET)	50'	38.66' (43'-5" RIDGE)
MAXIMUM BUILDING COVERAGE	25%	11% ±1%
<ul style="list-style-type: none"> • MINIMUM SIDE YARDS ARE THOSE SPECIFIED IN THE ZONE, BUT IN NO CASE LESS THAN 20 FEET. • MAXIMUM COVERAGE, MINIMUM LOT FRONTAGE, MINIMUM GREEN AREA, MINIMUM FRONT AND REAR YARDS AND MAXIMUM HEIGHT, ARE AS SPECIFIED IN THE APPLICABLE ZONE. 		
OFF-STREET PARKING		
STANDARD SPACES (8.5'x18')	37	43
ACCESSIBLE SPACES (8'x18' EA. + 8'x18' ACCESSIBLE ISLE)	2	2
TOTAL SPACES	39	45
<ul style="list-style-type: none"> • MINIMUM OFF-STREET PARKING MUST BE PROVIDED IN THE AMOUNT OF ONE PARKING SPACE FOR EVERY 4 BEDS AND ONE SPACE FOR EVERY 2 EMPLOYEES ON THE LARGEST WORK SHIFT. • (44 BEDS / 4 = 11 SPACES) + (30 MAXIMUM PEAK EMPLOYEES / 2 = 15 SPACES) = 26 SPACES. 		
LOADING SPACE(S) - SMALL DELIVERY VEHICLES / TRASH TRUCKS	1	1

An illustrative aerial view of the site (Attachment 2B to the Technical Staff report) portrays the intended building, its landscape buffering and its forested setting, which provides screening for the neighbors to the east, the north and the northeast.

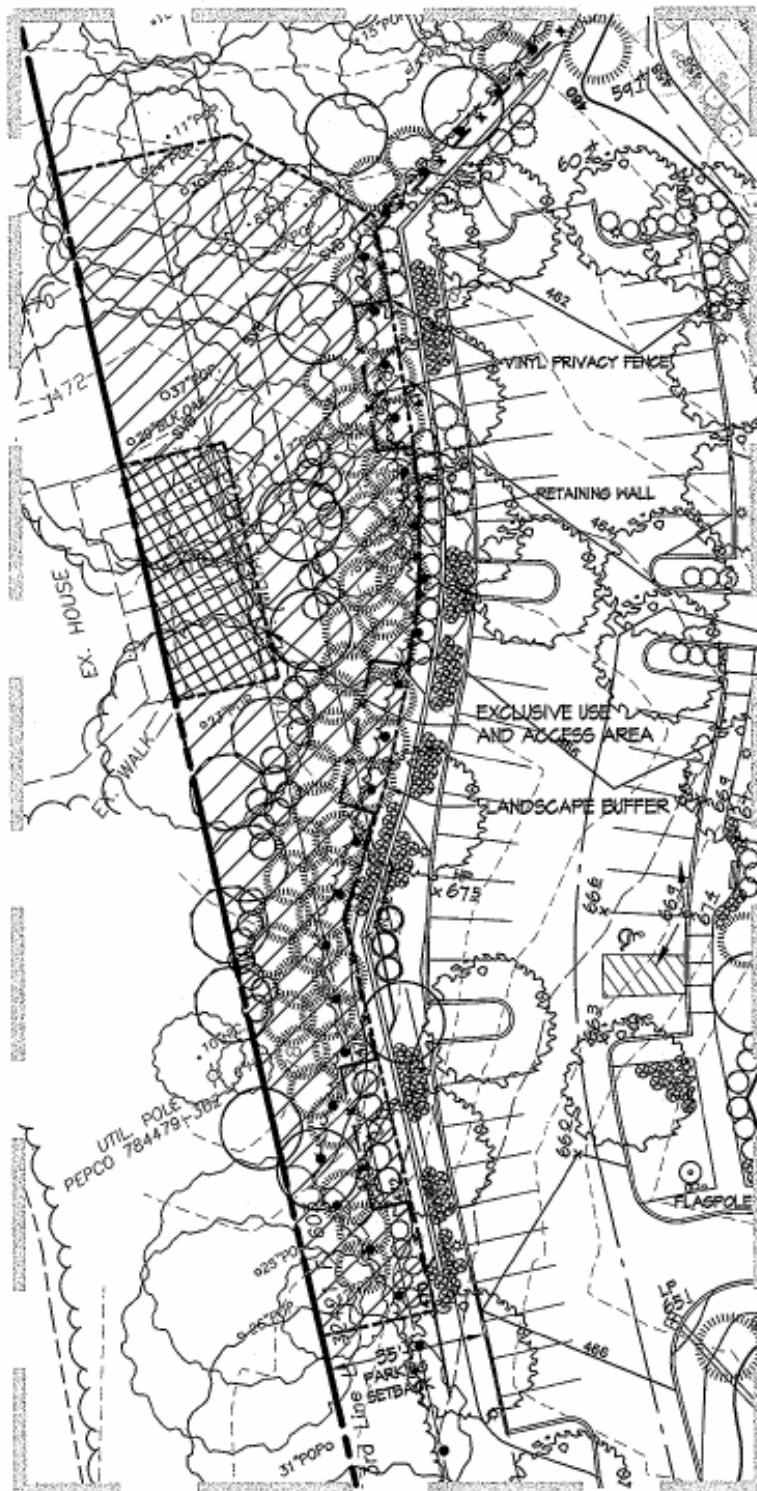


Technical Staff observed that Petitioner will “minimize the removal of existing trees.” Exhibit 24, p. 3. Additional landscaping will include a variety of trees from maple and white ash trees to juniper and holly, plus many species of shrubs and perennial. According to the revised plans, Petitioner will provide

a 58-foot wide landscape buffer and berm along Olney-Sandy Spring Road. Pathways are proposed throughout the site to allow the residents to feel as if they are in more of a residential setting. In addition to the western retaining wall mentioned above, there will be a retaining wall on the eastern and northeastern side of the proposed building, with landscaping both at its bottom and at its top in an effort to mitigate and block the mid-level under-story views from the homes (e.g. on Shotley Bridge Place) to the east/northeast of the proposed Sunrise building. Tr. 173-176. These features are shown on the revised Landscape Plan (Exhibit 52(c)):



INSET 'A'

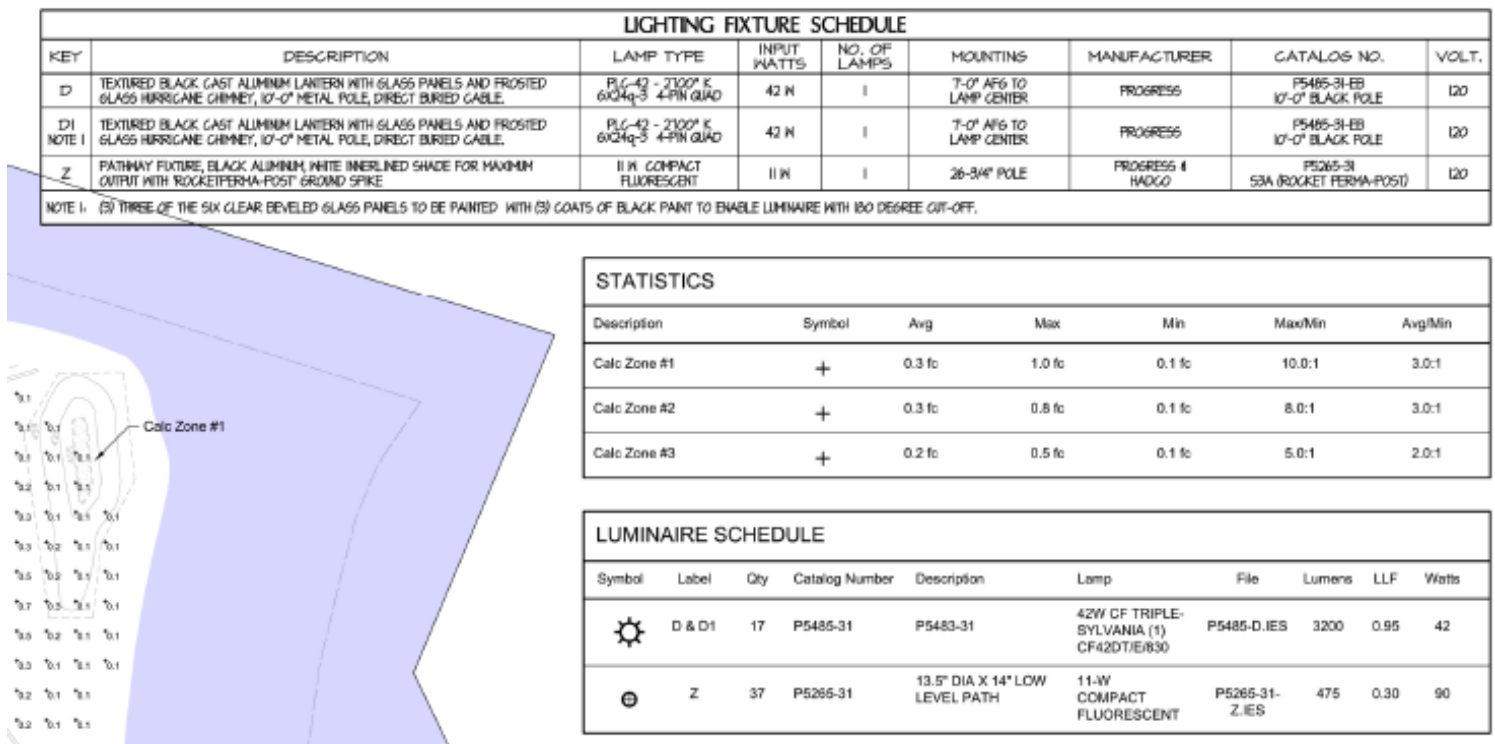


LEGEND

---	EXISTING TOPOGRAPHY
---	EXISTING TREE LINE
	EXISTING STRUCTURE
	PROPOSED STRUCTURE
SVB	STREAM VALLEY BUFFER
WB	WETLAND BUFFER
US	WATERS OF THE US
---	PROPOSED TREE LINE
...	LIMIT OF DISTURBANCE
---	PROPOSED CONTOURS
---	UTILITY HOUSE CONNECTIONS
---	PROPOSED SEWER LINE
---	PROPOSED WATER LINE
F.H.	PROPOSED FIRE HYDRANT
---	PROPOSED STORM DRAIN
	PROPOSED SWM STRUCTURE
*	PROPOSED PATH LIGHT
*	PROPOSED POST LIGHT
	EXISTING DECIDUOUS TREE - PROPOSED PRESERVATION
	PROPOSED DECIDUOUS TREE
	PROPOSED ORNAMENTAL TREE
	PROPOSED EVERGREEN TREE
	PROPOSED SHRUBS
	PROPOSED GROUNDCOVER/PERENNIALS
	PROPOSED SEASONAL COLOR - FLOWERS, ANNUALS, BULBS
	PROPOSED SWM PLANTINGS - NOT INCLUDED IN QUANTITIES - SEE SWM PLANS
	EXCLUSIVE USE AND ACCESS AREA - FOR ADJACENT PROPERTY OWNER
	LANDSCAPE BUFFER

Lighting for the proposed site was described by Petitioner's architect, Steven Ruiz, who stated that the external lighting will be similar to a residential home. The height of the light poles, to the bulb, is about 7 feet, and each fixture will have a 43-watt, florescent bulb, so the light spread is not great. According to Mr. Ruiz, lighting will be sufficient to meet the code, but the spillage off the site will not exceed one-tenth of a foot candle. Also, the driveway goes down six to eight feet, so the actual amount of light spillage will likely be less than the computer program projected in the photometric study, which shows the worst case scenario.

At the request of Mr. Knopf, Petitioner changed the lighting fixtures along the western property line to those which are designed to insure that light is directed away from the property line. This should prevent any light spillage to the west of the site. The revised Lighting Plan with a corrected photometric display (Exhibit 56) is shown below and on the following page. It demonstrates compliance with the light-spillage restrictions in the Zoning Ordinance. The lighting plan also provides cut-sheets fully describing the features of the lighting fixtures (Exhibits 52(e), (f) and (g)).



Shaded area's designate light level less than 0.1 fc

The revised Lighting Plan shows the light levels associated with the lantern D-1. Lantern D-1 has 3 of the 6 beveled glass panels painted with 3 coats of black paint to provide a 180 degree cut-off from the adjacent western property line. The Z light fixtures shown at the rear of the building is a hooded fixture, 27" tall, that directs the light onto the pathway. The photometric program reflects the detectable light levels of 0.1 as the lowest measurable light printed on this plan.



LIGHTING FIXTURE SCHEDULE				
KEY	DESCRIPTION	LAMP TYPE	INPUT WATTS	NO. OF LAMP
D	TEXTURED BLACK CAST ALUMINUM LANTERN WITH GLASS PANELS AND FROSTED GLASS HURRICANE CHIMNEY, 10'-0" METAL POLE, DIRECT BURIED CABLE.	PLC-43 - 2100W E 6024q-3 4-PIN QUAD	42 W	1
D1	TEXTURED BLACK CAST ALUMINUM LANTERN WITH GLASS PANELS AND FROSTED GLASS HURRICANE CHIMNEY, 10'-0" METAL POLE, DIRECT BURIED CABLE.	PLC-43 - 2100W E 6024q-3 4-PIN QUAD	42 W	1
Z	PATHWAY FIXTURE, BLACK ALUMINUM, WHITE INNER-LINED SHADE FOR MAXIMUM OUTPUT WITH ROCKETPERMA-POST® GROUND SPIKE	11 W COMPACT FLUORESCENT	11 W	1

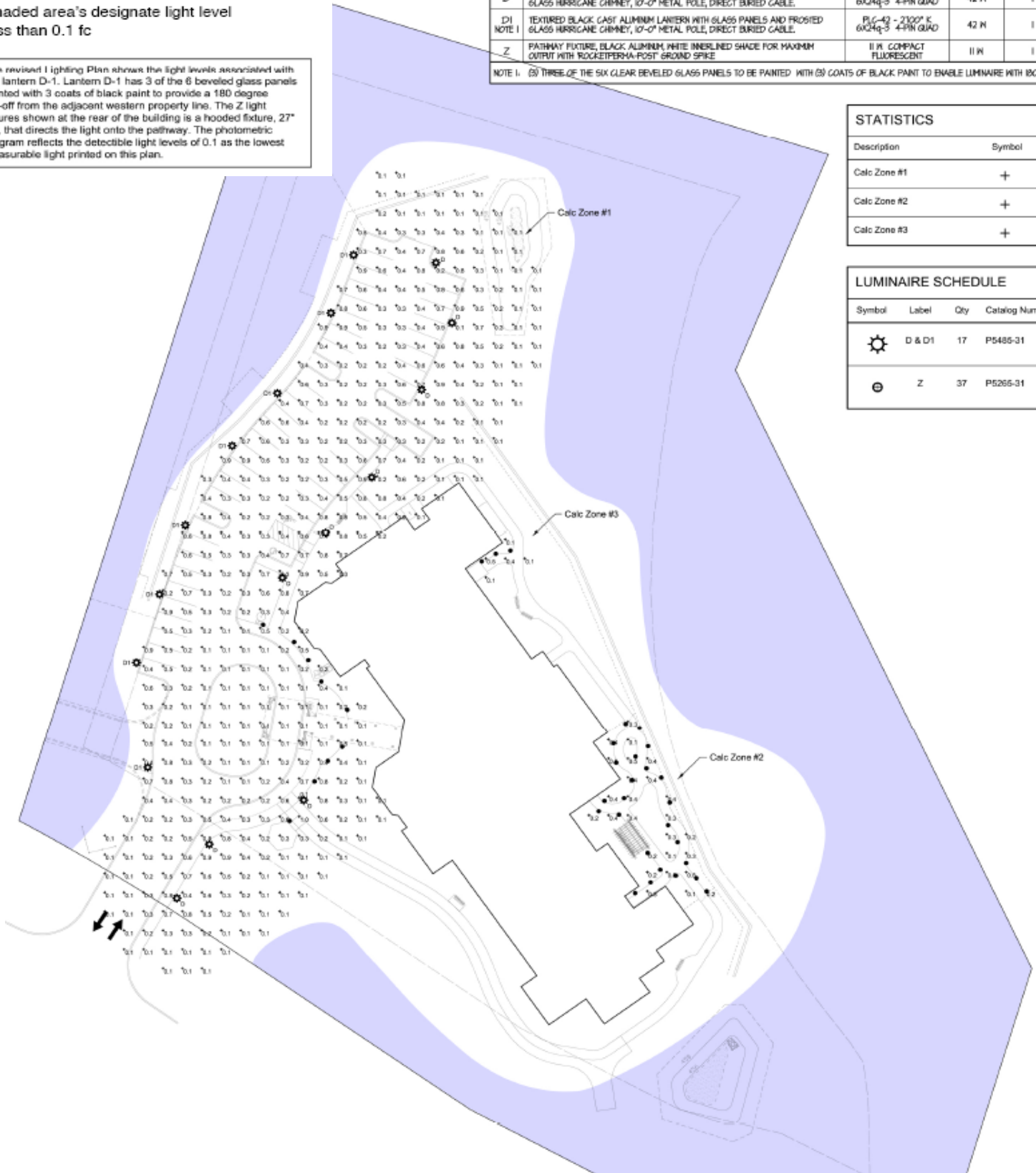
NOTE 1: (S) THREE OF THE SIX CLEAR BEVELED GLASS PANELS TO BE PAINTED WITH (3) COATS OF BLACK PAINT TO ENABLE LUMINAIRE WITH 180 D

STATISTICS

Description	Symbol
Calc Zone #1	+
Calc Zone #2	+
Calc Zone #3	+

LUMINAIRE SCHEDULE

Symbol	Label	Qty	Catalog Number
	D & D1	17	P5485-31
	Z	37	P5265-31



Petitioner proposes to have a sign at the entrance, as shown in both its site plan and landscape plan. Mr. Ruiz testified that the sign will be illuminated with 43-watt spotlights aimed directly at it. The following condition has been recommended regarding the intended sign:

A sign permit must be obtained for any sign, and a copy of the permit and diagram of the approved sign should be submitted to the Board of Appeals before the sign is posted.

D. Master Plan

The subject property lies within the area analyzed by the 2005 Olney Master Plan. The Master Plan provides that special exceptions “should be compatible with the development pattern of the adjoining uses in terms of height, size, scale, traffic and visual impact of the structures and parking lots.” Page 42. Community-Based Planning staff, in their memorandum dated December 10, 2007, state that the proposed assisted living facility is compatible with the surrounding land uses and structures, due to the 58-foot wide building setback and the fact that the parking lot is located along the western side, away from the street frontage. See Exhibit 24, Attachment 8. Community-Based Planning staff concluded that the proposal was consistent with the goals and objectives of the Master Plan, but recommended some additional landscaping. Landscaping will be added by Petitioner as shown in its Landscape Plan. According to Technical Staff, there is no room for more landscaping than has been proposed by Petitioner because of the proximity of the stream valley buffer (Exhibit 55).

Technical Staff also notes that the Master Plan does not include specific recommendations for this site relating to nursing and/or domiciliary care facilities; however, the Plan does acknowledge the need for such a facility in this area due to the aging population. Pages 59-62.

On page 15 of the Master Plan, one of the land use goals is to provide a wide choice of housing types in the neighborhoods for people of all income levels and ages, at appropriate densities and locations. Similarly, on page 59 of the Master Plan, the goal is to provide a mix of housing types in

Olney, increase the opportunities for affordable housing and housing for the elderly. Petitioner's land use planner pointed out that this project will be providing additional housing types for an increasingly older population in Montgomery County.

The Master Plan also mentions that the inventory of elderly housing in the Olney area could be expanded by special exceptions on some of the vacant and re-developable sites in and around the planning area. Page 62. The Plan specifies that development should incorporate age-in-place strategies, which Petitioner has done.

The Hearing Examiner also notes that the Master Plan does not recommend a change in the current RE-2/TDR Zone, and the use sought here is permitted by special exception in that zone. It is therefore fair to say that it is consistent with the goals of the Master Plan.

E. Environment

A number of participants from the community raised concerns about the environment, suggesting that the proposal would violate a forest conservation easement. Petitioner's land use planner, Kevin Foster, pointed out that there was currently no forest conservation easement on the site, but one would be included as part of this development. Tr. 55. The site is not in a Special Protection Area.

Environmental Planning Staff indicates that the property is within the Patuxent Primary Management Area (PMA), but is not subject to the PMA's 10% imperviousness limit because the site's density is greater than permitted in the RE-2 Zone.⁴ This distinction is spelled out in the Olney Master Plan, at page 77, in its discussion of the Patuxent River and Hawlings River Watersheds. However, as noted by Staff, "best management practices" (BMPs) are required to minimize the impacts of the higher densities. The site is also subject to the Montgomery County Forest Conservation Law, and a Preliminary

⁴ The RE-2 zone permits a density of up to "1.1 dwelling units per acre in any subdivision recorded," as specified in the last sentence of footnote 1 to Zoning Ordinance §59-C-1.32. The RE-2/TDR Zone permits up to 4 dwelling units per acre, pursuant to Zoning Ordinance §59-C-1.332(c).

Forest Conservation Plan (Exhibit 22(1)) has been submitted and recommended for approval by Technical Staff (Exhibit 24,p. 2), subject to Petitioner meeting all conditions for issuance of sediment and erosion control permits. Pursuant to the Forest Conservation Plan, which will be reviewed by the Planning Board at subdivision, Petitioner will retain 2.08 acres of forested area in a Category I Forest Conservation Easement on the eastern and northern boundaries of the subject site, and will preserve some significant specimen trees. The diagram portion of the Preliminary Forest Conservation Plan is shown below:



Petitioner has submitted a concept Stormwater Management Plan (Exhibit 22(n) and (o)) which is under review by the Montgomery County Department of Permitting Services (DPS). It will have to be approved prior to subdivision approval by the Planning Board.

Petitioner has also proposed installing a “green roof” on this facility, as well as incorporating green alternatives for stormwater management. Exhibit 24, p. 3 and Tr. 167-168. Environmental Planning staff found no environmental concerns warranting denial of this petition, but recommended conditions which have been incorporated into this report.

F. Public Facilities, Transportation & Parking

In this case, subdivision will be required. Therefore, under Zoning Ordinance §59-G-1.21(a)(9)(i), it is the Planning Board and not the Board of Appeals which must ultimately determine the adequacy of public facilities. This limits the scope of the transportation review to issues of compatibility and adverse effects on the neighbors. In that regard, Technical Staff stated (Exhibit 24, p. 6):

In reviewing this case, staff has not identified non-inherent effects that would adversely impact the area. Staff finds that the size, scale and scope of the proposed use are minimal and are not likely to result in any adverse noise, traffic disruption or any environmental impact. Additionally, there are no unusual characteristics associated with the proposed use.

Petitioner’s expert in transportation planning, Mike Workosky, concluded that the proposed development would have very little impact on traffic and would be in harmony with the neighborhood from that perspective. Tr. 121. He added that it would not adversely affect the present character or future development of the community due to traffic. Tr. 122. Similarly, Petitioner’s land use expert, Kevin Foster, testified there is adequate parking for the residents, and there will be no traffic disruptions because there is adequate road capacity for the project. Tr. 64.

These findings were buttressed by Technical Staff’s conclusion quoted above and by Transportation Planning Staff’s conclusions, appended as Attachment 9 to the Technical Staff report

(Exhibit 24). They agreed with Petitioner's expert that the proposed facility will generate only 24 trips in both the morning and evening peak hours. Under the Local Area Transportation Review (LATR) standards, a traffic study is not required because the use will not generate 30 peak hour trips.

Nevertheless, Mr. Workosky calculated the critical lane volume (CLV) at the Prince Phillip and Old Baltimore Road intersections with Route 108. Prince Phillip operates at just below 1,000 CLV and Old Baltimore Road is at 1263. Since the standard in the Olney area is 1450 for critical lane volume, there is available capacity at both of those intersections.

Mr. Workosky also collected "a link volume count"⁵ along Route 108. Applying the number of trips that would be generated at the studied intersections to the existing link volume, Mr. Workosky found that there would be a minimal increase in traffic volume, roughly 1 percent, and the same with regards to critical lane volume movements at the intersections. He concluded that there is adequate road capacity, and the special exception would cause little or no change. There are also public transportation facilities and shared-use paths for pedestrians and bicycles along the affected routes.

Technical Staff suggested that Petitioner would also have to comply with the 2007-2009 Growth Policy test for Policy Area Mobility Review (PAMR). Exhibit 24, p. 5. After Technical Staff had filed its report, the Council, on February 26, 2008, adopted Zoning Text Amendment (ZTA) 07-17 (Ordinance No. 16-14, effective March 17, 2008). The Hearing Examiner takes official notice of that enactment. Under ZTA 07-17, special exceptions are required to comply with the Growth Policy in effect when the special exception application is filed.

Since the application in this case was filed August 9, 2007, and the new Growth Policy did not

⁵ Mr. Workosky explained that "link volume" in this context is a traffic engineering term used by the ITE to measure the volume of traffic on a road segment between two intersections. "It's just another way of looking at what the traffic impact's going to be." Tr. 118. The CLV is a measure of how the intersection itself functions, while the link volume helps determine whether there are enough lanes to serve the traffic on that link. It is a separate analysis in terms of capacity and also a measurement of the effect of any development.

become effective until November 15, 2007, it is the old Growth Policy which governs this special exception. PAMR was not a part of the old Growth Policy, and therefore this special exception is not required to comply with it. However, this project will have to go through subdivision., and the new Growth Policy, including PAMR will apply at that stage.⁶ Moreover, Transportation Planning Staff recommended a number of conditions which have been incorporated into Part V of this report.

As previously mentioned, parking is proposed along the west side and rear of the proposed building. Petitioner proposes 45 parking spaces (2 handicapped and 43 standard), in addition to one loading space for deliveries. This exceeds the statutory requirement of 39 spaces.⁷ The setbacks provided from the parking facility will meet the requirements of Zoning Ordinance §59-E-2.83, including the doubled side-yard setback. Additionally, a landscape buffer, including a retaining wall and vinyl privacy fence, will be erected to protect the nearest neighbors, the Rings. Neighbors to the north and east will be shielded by the proposed building, the vegetative buffer and the distance separating them.

Finally, the evidence is that other public facilities will be available to this project. Tr. 79-80. Police and fire services are nearby, and all of the necessary public facilities are available on or adjacent to the site. Water and sewer facilities are located in Route 108, along with electric, telephone and cable. Due to the age of the residents, they will put no burden on public schools.

G. Community Response

Not surprisingly, the Petitioner's proposal to build and operate an assisted living facility has generated interest from the nearest neighbors, three of whom participated in the hearing, two in person

⁶ For FY 2007, to satisfy the PAMR test in the Olney Policy Area, a subdivision applicant is required to mitigate 25% of peak-hour site-generated trips. In this instance, with a trip generation of 24 peak-hour trips, six (6) peak-hour trips during both the morning and evening peak periods will need to be mitigated. Transportation Planning Staff concluded that it was reasonably probable that Petitioner will be able to comply with PAMR at subdivision. Exhibit 24, Attachment 9.

⁷ This figure is derived from the requirement in Zoning Ordinance §59-E-3.7 of one space for every 4 nursing home beds ($94 \text{ beds} / 4 = 24 \text{ spaces}$) and one space for every 2 employees on the largest work shift ($30 \text{ employees} / 2 = 15 \text{ required spaces}$).

and one through counsel. The closest neighbors, the Rings, have worked out an understanding with Petitioner, and they actually support the petition. Tr. 178.

The thrust of the other neighbors' objections is that the facility will be much larger than homes in the area, that it will be visible to them, especially in the winter when the leaves are off the trees, and that it will have adverse impacts on them from traffic and noise, and on the environment, through the loss of trees. Testimony of Allen Abel (Tr. 98-103) and Mary Clare Roeder (Tr. 104- 110), which is summarized in Part III of this report. Mrs. Roeder also cautioned about the general impact of development upon the environment and on the safety of students walking to school. Ruchita Patel, an agent for the Lake Hallowell Homeowners Association, added, in a post-hearing letter (Exhibit 43), that the residents of Lake Hallowell purchased their homes with the understanding that the RE-2/TDR Zone would limit density in their neighborhood to two units per acre.⁸

Such impacts must be evaluated along parameters established by the Council and enforced by the Department of Permitting Services and the Maryland-National Capital Park and Planning Commission. This special exception (*i.e.* an assisted living facility) is permitted by the Zoning Ordinance in this residential zone. It therefore must have been anticipated by the Council that there would ordinarily be residences near and around a typical site in a residential zone. The fact that there are such nearby residences cannot, in and of itself, defeat the petition. There is nothing atypical about this site which makes its use as an assisted living facility more intrusive on the surrounding neighborhood than would ordinarily be expected in a residential zone. In other words, any adverse characteristics it might have are inherent, rather than non-inherent, and the significance of this distinction will be discussed more fully below and in Part IV.A. of this report.

⁸ Actually, the RE-2/TDR Zone permits up to 4 dwelling units per acre, pursuant to Zoning Ordinance §59-C-1.332(c). But more importantly, it permits domiciliary care homes of this type by special exception if the standards specified in the Zoning Ordinance are met, so homeowners cannot reasonably claim that they relied upon the Zoning Ordinance in

The neighbors closest to the site have reached an agreement with the Petitioner, and they are supporting the petition. The next closest neighbor will be 324 feet from the proposed structure (Exhibit 45(m)). Perhaps as importantly, the properties to the rear of the site will be shielded by a significant amount of existing trees and by landscaping to be installed on the premises. While the screening will not totally obscure the planned facility, especially in the winter, it will significantly reduce its visible impact. The proximity of the stream valley buffer leaves no more room for additional landscaping to the north and east beyond what Petitioner has agreed to install. Exhibit 55.

Land use policy makers (*i.e.*, the Council) must engage in a kind of balancing act, weighing the right of a property owner to do what it wants to do with its private property against the needs of the neighbors not to have significant adverse impacts upon their properties. The policy makers must simultaneously consider the public interest in having some necessary facilities available in residential areas. This balancing act is accomplished through the Zoning Ordinance, which sets the parameters within which land uses are permitted. The Council has determined that this type of special exception is permitted, even though it will potentially have some adverse effects on the neighbors regardless of where it is located within the zone. The case law is quite clear that where a use is permitted by the Zoning Ordinance under a special exception, that use may not be denied if the only adverse effects it produces are those which are inherent in the nature of the special exception. As stated in *Schultz. v. Pritts*, 291 Md. 1, 22-23; 432 A.2d 1319, 1331(1981),

We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects **above and beyond** those inherently associated with such a special exception use irrespective of its location within the zone. [Emphasis added.]

believing that this type of facility could not be located in their Zone. The Zoning Ordinance standards are discussed in Part IV of this report.

The problem with the objections of the neighbors is that the adverse impacts of which they complain would be expected wherever this facility is placed in this residential zone. Wherever it is located, such a facility will likely be visible to some extent; it will produce some traffic and it will produce some noise and activity. In the subject case, the impact of the activity it may produce is ameliorated by the fact that the facility will front on a major road, Md. Route 108, not a residential street. Moreover, the proposed facility will have setbacks far exceeding the minimums specified in the zoning ordinance for this zone and for this type of special exception.

For example, under Zoning Ordinance §59-G-2.37(c)(1), the minimum lot size for the RE-2 Zone is determined by multiplying the number of resident beds times 1,200 square feet. In this case, that means multiplying 94 beds times 1,200, which yields a minimum lot size of 112,800 square feet. The lot size here is almost twice that, at 213,092 square feet. The side-yard setbacks must be at least 20 feet under Zoning Ordinance §59-G-2.37(c)(3). Here they will be about 102 feet on one side and a combined total of 245 feet. The minimum rear-yard setback is determined by Zoning Ordinance §59-C-1.323(b), at 35 feet. Here, the rear-yard setback will be 222 feet. These setbacks leave lots of room for a vegetative buffer, and one will be provided. As mentioned above, the closest objecting neighbor's home is 324 feet back from the intended facility. Thus, the standards established in the Zoning Ordinance to protect the neighbors against adverse impacts from this kind of facility will be more than met in this case. There is nothing else unusual about the site that would result in non-inherent adverse impacts.

The decision on a zoning application "is not a plebiscite," and generalized fears in the community cannot overcome actual evidence. *Rockville Fuel v. Board of Appeals*, 257 Md. 183, 192, 262 A.2d 499, 504 (1970). It is not the Hearing Examiner's function to determine which position is more popular, but rather to assess the Petitioner's proposal against the specific criteria established by the Zoning Ordinance.

Some of the opponents have suggested that this facility is not needed in the area since there are other senior residences in the area. Although a petitioner for this type of special exception is not required to show neighborhood or County need, Mike Parsels, Director of Real Estate with Sunrise Senior Living, testified that Sunrise chose this site in Olney because there is a need in the community for this type of facility.⁹ The other senior facilities in the area differ markedly in their approaches, and to some extent, the clientele they serve. According to Mr. Parsels' testimony, Olney's octogenarian population is underserved, and the available choices for long-term care are limited and very different from the type of facility that Sunrise is proposing. As pointed out by the People's Counsel, while need does not have to be demonstrated, the fact that there is a need here constitutes a public interest reason for approval. It also militates against finding an over-saturation of special exceptions in the neighborhood. Tr. 32.¹⁰

Questions about environmental concerns, traffic impacts and lighting spillage have been addressed in previous sections of this report, and as shown there, the subject petition meets the applicable standards.

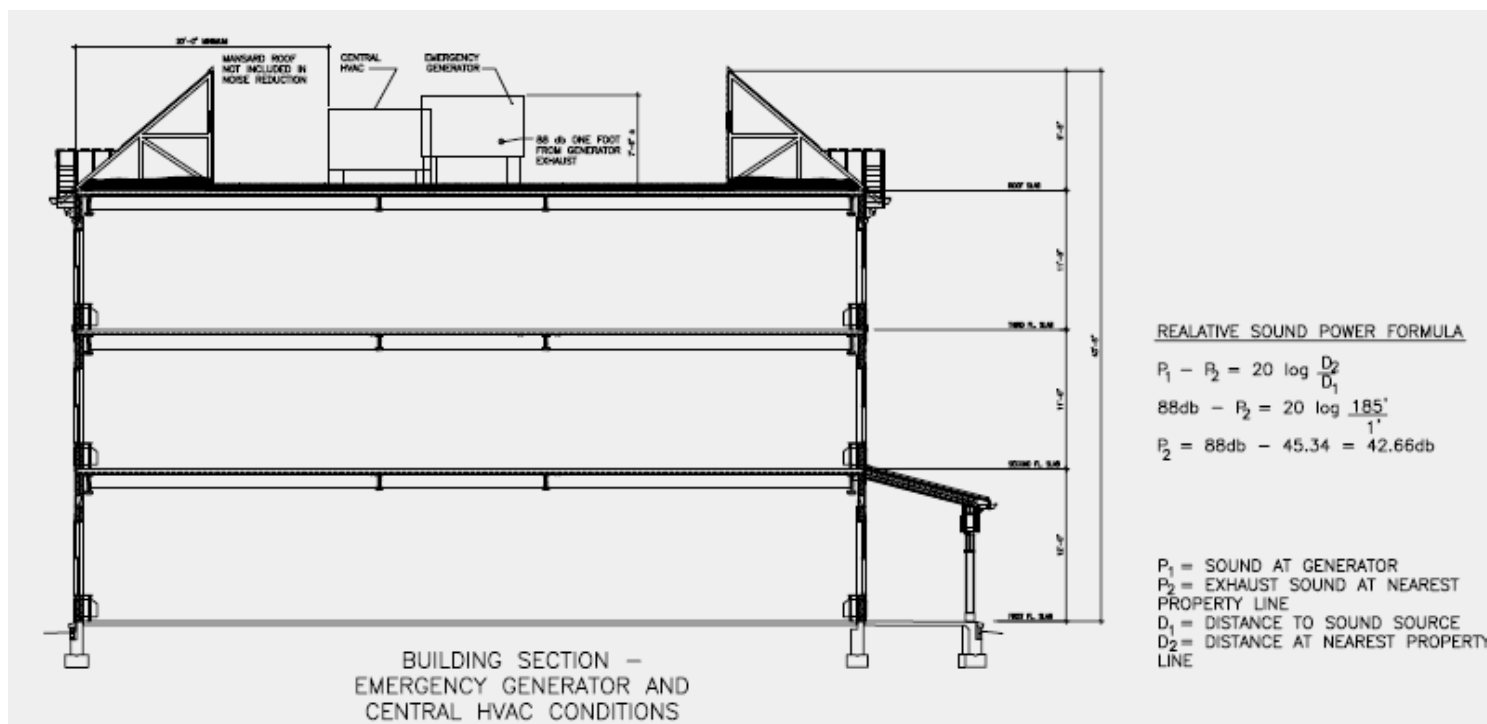
One issue raised at the hearing was the possibility of noise from the facility's generators and HVAC (heating, ventilating, and air conditioning) equipment. In response, Petitioner produced a diagram and notes (Exhibit 45(h)), which demonstrate that noise levels will be well within County standards:

THE CENTRAL HVAC EQUIPMENT WILL BE LOCATED ON THE ROOFTOP OF THE SUNRISE FACILITY, NO CLOSER THAN TWENTY FEET FROM THE BUILDING EDGE AND BEHIND THE MANSARD ROOF. THE DECIBAL RATING PRODUCED BY THIS EQUIPMENT SHALL BE LESS THAN THAT PRODUCED BY THE GENERATOR AND THEREFORE BY FORMULA SHALL BE LESS THAN 43 dbA AT THE PROPERTY LINE WHICH IS BELOW THE ALLOWABLE NOISE LEVEL OF 55 dbA STATED IN SECTION 31B-5.

THE ATTACHED DIAGRAM SHOWS THE LOCATION OF THE SUNRISE GENERATOR LOCATED ON THE ROOF OF THE PROPOSED STRUCTURE. THE FORMULA PROVIDED IS AN ACOUSTIC FORMULA TO DETERMINE THE SOUND POWER AT A SPECIFIED DISTANCE FROM THE SOUND SOURCE. WE HAVE NOT INCLUDED THE SOUND REDUCTION ASSOCIATED WITH THE PROPOSED MANSARD ROOF TO SIMPLIFY THE CALCULATION. AS SHOWN IN THE FORMULA, THE SOUND RATING AT THE PROPERTY LINE IS LESS THAN 43 dbA (THE MANSARD WILL FURTHER REDUCE THIS RATING) WHICH IS WELL BELOW THE ALLOWED 55 dbA AS NOTED IN SECTION 31B-5, NOISE LEVEL DISTURBANCE VIOLATIONS.

⁹ Mr. Parsels testified that he personally conducted a survey which revealed that there are 12,616 age and income qualified caregiver households within five miles of the site, and there are 4,343 age-and-income qualified senior households. This is significantly above Sunrise's minimum threshold for a site, which is a minimum of 7,000 to 8,000 qualified care-giver households and 2,500 senior households. Thus, there is an under-supply of assisted living beds in a five mile radius around the site. Tr. 36-37.

¹⁰ The court reporter mislabeled Mr. Klauber's comments as coming from Mr. Knopf.



A condition is also recommended in Part V of this report which requires Petitioner to “insure that noise from its generators, air-conditioning and other equipment does not exceed county standards.”

Another noise concern raised by some neighbors to the northeast of the site was the possibility that noise from early deliveries and trash pickups would create a disturbance.

Technical Staff had recommended limiting deliveries to 8:30 AM to 5:00 PM weekdays and from 9:00 AM to 4:00 PM on Saturdays. They recommended trash pickups from 9 AM to 5:00 PM weekdays and from 9:00 AM to 4:00 PM on Saturdays. The Planning Board, however, changed that recommendation with regard to weekdays to 7:00 AM to 7:00 PM because Petitioner complained that Technical Staff's proposed restrictions would interfere with their operations. The Planning Board expressed its belief "that deliveries may begin as early as 7 A.M. without any adverse impacts to nearby properties." Exhibit 29.

The Hearing Examiner also considers it unlikely that early deliveries and trash pickups would create a noise problem because the closest neighbors (other than the Rings who have said they do not object to the early deliveries and trash pickups – Tr. 181) are 324 feet from the proposed building, and even farther from the trash pickup location, which is on the west side of the building. Moreover, there will be no external dumpster, and the building, in addition to the landscaping, will shield the northeast neighbors from the delivery and garbage pickup noise.

Nevertheless, in order to make sure that things do not turn out worse in this regard than is anticipated, the Hearing Examiner proposes the following condition in Part V of this report:

5. Except in emergencies, deliveries of food and medical supplies are limited to Monday through Friday, 7:00 A.M. to 7:00 PM, and Saturday, 9:00 A.M. to 4:00 PM, and trash pick-ups are limited to Monday through Friday, 7:00 A.M. to 7:00 PM, and Saturday, 9:00 A.M. to 4:00 PM. These time parameters may be reviewed by the Community Liaison Council established pursuant to condition numbered 18 below, if in actual practice, early deliveries and trash pickups are creating undue noise disturbances or traffic hazards. The Board will retain jurisdiction to review this issue and modify the times permitted for deliveries and trash pickups if it determines that the time of the deliveries and pickups is creating a nuisance.

The Community Liaison Council was recommended by the People's Counsel and agreed to by Petitioner. Tr. 182-184. The concept has apparently been successfully employed in other similar situations. The Hearing Examiner agrees that it is a sensible recommendation to avoid adverse consequences to the community by providing a forum to address community concerns, and the following condition is therefore proposed in Part V of this report:

18. Petitioner must create a Community Liaison Council (CLC) to discuss and address issues of concern to Petitioner and/or the community. The CLC shall consist of Petitioner's representative and representatives from the Greater Olney Civic Association (GOCA), Lake Hallowell, Hallowell, and any other civic association or homeowners association within the defined neighborhood wishing to participate. The adjacent neighbors (the Rings and representatives from Shotley Bridge Place, Fort William Drive and Eaglesham Place) must also be invited to participate, and the People's Counsel must be included as an *ex officio* member of the CLC. Meetings must be held at least twice a year, and minutes must be kept by Petitioner and filed with the Board of Appeals annually.

In sum, although neighbors in opposition have raised some legitimate concerns, they do not warrant denial of the subject petition. They do warrant the imposition of special conditions which have been discussed in order to limit any potentially adverse consequences.

III. SUMMARY OF THE HEARING

Petitioner called five witnesses, Mike Parsels, Director of Real Estate with Sunrise Senior Living; Kevin Foster, an expert in land planning and landscape architecture; Mike Workosky, an expert in transportation planning; Steven Ruiz, an architect; and Seth Churchill, a civil engineer. Two members of the community testified in opposition, Allen Abel and Mary Clare Roeder. The owners of the home adjacent to the subject site, John and Janet Ring, did not appear personally, but were represented at the hearing by their lawyer, Norman Knopf, Esquire, who participated in the hearing. The People's Counsel, Martin Klauber, Esquire, also participated in the hearing.

Before witnesses were called, several preliminary matters were discussed:

The Hearing Examiner noted that the Planning Board changed the time limit recommendations for deliveries of food and medical supplies and for trash pickups to 7:00 a.m. to 7:00 p.m., Monday through Friday, and 9:00 a.m. to 5:00 p.m. on Saturdays. The Planning Board stated that it was doing so because it "did not find a reasonable basis for restricting, as recommended by staff, the food and medical supply deliveries after 8:30 A.M. The Board believes that deliveries may begin as early as 7:00 A.M. without any adverse impacts to nearby properties." Exhibit 29. Since the Planning Board recommended the same time limitation change for trash pickups as it did for food and medicine deliveries, but did not state why, the Hearing Examiner asked whether the Board had intended to change both recommendations.

Petitioner's counsel and counsel for the Rings, both of whom were at the Planning Board proceedings, indicated their understanding that the Planning Board intended to change all the time limit

recommendations to allow earlier deliveries and trash pickups. Mr. Knopf noted that there would be no dumpsters, so that trash pickups would be quieter than is typical, and that influenced the Board. Tr. 6-8.

Petitioner's counsel, Cynthia Bar, also indicated that her client accepts the conditions recommended by Technical Staff in their report, as amended by the Planning Board. Tr. 8-9.

Finally, the Hearing Examiner inquired as to whether there was any agreement between Petitioner and the Rings, as had been implied by Mr. Knopf's letter of December 27, 2007 (Exhibit 26). Mr. Knopf and Ms. Bar explained that an understanding had been reached, and that Petitioner's plans would be revised to reflect the agreement. The agreement provides for the continued exclusive use by the Rings of their patio, even though a portion of it is located on Petitioner's property, as evidenced by Exhibit 32; for an area to be used exclusively as landscape buffer, as shown on Exhibit 33; and for an amendment to the plans and the Statement of Operations to reflect this agreement. Based on their agreement with Petitioner, Mr. Knopf stated that the Rings support the petition. Tr. 10-15.

A. Petitioner's Case

1. Mike Parsels (Tr. 18-45):

Mike Parsels testified that he is the Director of Real Estate with Sunrise Senior Living, managing development activities for Sunrise throughout Virginia and Maryland. In that capacity, he acts as the owner's representative during construction; serves as the liaison between the company and the community; responds to concerns coming from the community from pre-construction through opening of the facility; manages the early leasing of the residence; and ultimately obtains a certificate of occupancy.

Sunrise Development, Inc. is the actual entity, and it does business as Sunrise Senior Living. Prior to the 1980s, most long-term senior care was provided through nursing homes in an institutionalized setting. Sunrise's founders changed the approach, finishing their facilities as residential

settings, inside and out, with the comforts of home. Sunrise facilities are built for the care of seniors, and are residential-driven and resident-centered, as an alternative to the institutional model.

Mr. Parsels further testified that a foundational principle within Sunrise has been that architecture can enhance a person's quality of life, both for the residents but also for the staff. It's a nice place to work. It's a nice place to live. "Great assisted living combines very high quality care with high quality architecture. Our goal is to create exteriors and interiors with a manor house look and feel offering the comforts of home." Tr. 23. The company has received several awards for excellence in design and architecture because of its approach.

Mr. Parsels identified photos showing typical exteriors and interiors of Sunrise facilities (Exhibits 35(a) through (i)). Outside there's an emphasis on lawn and landscaping, trees, flower beds, and enclosed gardens, walking path that loops around the building, bird feeders, benches, low intensity lighting, gazebo, and wrap around porches. All sides of the building of every one of Sunrise's buildings are residential in scale and finished on all four sides.

Inside there are fresh cut flowers, rooms designed to be sunny, small, and comfortable, but with a design that provides approximately 40 percent common area, and multiple small rooms. A concierge greets guests. There are small conveniences such as tissue paper, phone and coat rack near the front door; twenty-four hour bistro snack bar with a juke box; a formal dining room; three meals a day, provided in two seatings; a private dining room; a theater and activity room with a full time activities director; and state-of-the-art elements such as wireless phone systems. Each of the care managers carries a wireless system so that residents can be identified if there is an emergency.

There is also a diversity in unit sizes. Within this building there will be 74 units, but there's likely to be as many as nine different types or styles or varieties of unit types. Another important

principle is that Sunrise buildings, as the industry goes, are small, with 70 to 80 units, compared to 120 to 130 for a competitor.

According to Mr. Parsels, Sunrise chose this site in Olney because there is a need in the community for this type of facility. Currently, Olney's "80 plus year old population" is under-served, and the available choices for long-term care are limited and very different from the type of care and facility that Sunrise is proposing.

Four other facilities were mentioned in one of the neighbor's letters. One is Marion Fathers. Marion Fathers is approximately two miles north from the town center. It's in a residential setting, but it is a smaller facility and it has very high occupancies. Another provider is Brooke Grove. Brooke Grove is approximately a mile and a half from the town center in Olney. It is a campus setting, operating like a continued care retirement community (CCRC). It has a nursing home on the campus and seven different types of small assisted living buildings, providing care for approximately 12 to 20 residents in each building in a domiciliary care home setting, rather than a Sunrise proposed building which is a congregate setting, with all residents within one building.

Friends Home, which is also a CCRC setting, has a very small assisted living program. In essence, they're more than independent living provider. They also have some nursing care beds. Mr. Parsels stated that there is a stark contrast between a campus setting and Sunrise's more main-street, in-town setting. The care that's provided in a CCRC, for the most part, draws 70-plus year old population that ages in place, while Sunrise's target market will be the 80-plus year old, more frail population, that very often will reject CCRC or continuing care retirement community settings.

Andrew Kim House is a HUD financed apartment community. Those residents live independently and they're income-qualified. That is dramatically different from the type of care and

services that Sunrise will provide. There are no in-house services provided by Andrew Kim staff. In essence, it is a HUD financed, income qualified, apartment community for seniors.

Mr. Parsels indicated that the Sunrise community will be better suited to enhance the quality of life of Olney's frail seniors, allowing them to age in place. [Mr. Klauber interjected that although there is no statutory requirement to show need for this special exception, evidence that the facility would serve a need for the elderly population impacts on the question of the public interest. Tr. 32.¹¹] According to Mr. Parsels, "it's recognized by the county and by the Olney Master Plan but in other studies that have been performed by the county that there is a growing need; that the demand is growing faster for senior housing alternatives, including assisted living." Tr. 34. He was not able to provide specific references.

Mr. Parsels testified that he personally conducted a survey which revealed that there are 12,616 age and income qualified caregiver households within five miles of the site, and there are 4,343 age and income qualified senior households. This is significantly above Sunrise's minimum threshold for a site, which is a minimum of seven to eight thousand qualified care-giver households and 2,500 senior households. Thus, there's an under-supply of assisted living beds in a five mile radius around the site.

Sunrise seeks a special exception for a 74 unit maximum, 94 bed domiciliary care home, more commonly referred to as an assisted living facility. According to Mr. Parsels, the residents that Sunrise will serve will be 80-85 years old. Most will be female. Most can no longer live at home alone, yet don't need nursing care. All or virtually all will need assistance with at least one activity of daily living, day-to-day dressing, assistance with medications, assistance with meals. On average, Sunrise residents will relocate from or be related to a household from within 3-5 miles of the site. The average resident will reside within the facility three years and will have needs greater than any independent living community can accommodate, but won't need nursing home care.

¹¹ The court reporter mislabeled Mr. Klauber's comments as coming from Mr. Knopf.

Sunrise provides a personalized wellness plan, assistance with activities of daily living, concierge services, security, all utilities except phone and cable, personalized meal plan, housekeeping, laundry, linen service, 24-hour personal emergency response systems, maintenance, and scheduled transportation. In addition, the regular daily activities are scheduled.

Mr. Parsels described the Reminiscence program, which has two levels. Every Sunrise facility has a terrace club program and a reminiscence program. It allows residents to age in place. Essentially these are services that cater to residents suffering from some sort of memory disorder, Alzheimer's or dementia. The Terrace club is designed to assist seniors in the early stages of memory loss. The Reminiscence program is designed for seniors with mild to more advanced Alzheimer's or other memory disorders.

Sunrise staff are trained to begin understanding the stories and details of a senior's life early so that they can be helped to attain "pleasant days." The Reminiscence program in Olney will be on the third floor, where all doors are fully secured and monitored, and staff are specifically trained to care for those residents. Meals are brought up to those residents, and they have their own server area where meals are served in a safe, comfortable environment.

Sunrise personnel will run day-to-day operations of the building. The home will be run by an executive director. There will be an R.N. with a number of LPNs and care aides on staff. There will be an activities director, maintenance director, dining services coordinator, and Reminiscence program director. The number of employees on site during the peak shift, 7:00 a.m. to 3:00 p.m. is expected to be 25 to 28 but will not exceed 30. Staff will arrive at staggered hours between 7:00 a.m. and 9:00 a.m. to minimize disruptions. Staff are scheduled in three shifts providing around the clock care, 7:00 a.m. to 3:00 p.m., 3:00 p.m. to 11:00 p.m., and 11:00 p.m. to 7:00 a.m. Staff are trained and drilled in preparation for emergencies, and the doors are electronically monitored at all times during the day. After

evening meal service, the doors will be electronically locked and admittance will be managed by staff. There will be 24 hour emergency e-call system, pull cords and so forth, for staff for emergencies. Also, the phones are designed so that if there's an emergency and a resident knocks the phone off their table top, it will also call staff.

Mr. Parsels noted that this location will benefit from public transportation, nearby medical services, restaurants, recreational and other community services. Montgomery General Hospital, Town Center shopping, and convenience stores are nearby. Virtually none of the residents of the facility will drive, and a van service will give residents access to convenience stores, to local shopping, to restaurants, to the nearby theater and to churches along Route 108.

Sunrise will operate and maintain the facility after it is constructed. Sunrise has approximately 24 assisted living properties in Metro D.C. and over 450 communities in five countries, caring for 53,000 frail seniors.

According to Mr. Parcels, prior to submitting this application, Sunrise development team met with representatives of the local civic and homeowners associations (GOCA, Lake Hallowell, Hallowell) as well as with the nearby neighbors who had a view of the property. There's a forested area which will serve as a buffer around the building. While there will be some visibility to the Sunrise building, it will be significantly broken up. Mr. Parcels stated that, among all the sites he had evaluated, "this is by far the most significant buffered area, separation area." Tr. 44.

It is Mr. Parsel's understanding that it's not a forest conservation property. This site has exactly what Sunrise looks for, a main street setting which will allow the residents to feel like they're still part of Olney and part of the community.

2. Kevin Foster (Tr. 46-97; 173-176):

Kevin Foster testified as an expert in land planning and landscape architecture. He used an aerial photo (Exhibit 36) to describe the subject site and the surrounding area. It's an approximately a five acre site. Currently it's wooded and has a number of specimen trees, as shown on the NRI/FSD. There is no existing forest conservation easement on this property. Tr. 55.

The site slopes from Route 108 to the north. There's a tributary on the east side of the property that runs north to Lake Hallowell. There's also a small tributary to the north end of the property that also runs to Lake Hallowell, and these two tributaries and their associated stream buffer are create an environmental buffer between the subject property and the existing residences in that area. The subject property is Parcel 359, in the RE-2/TDR Zone, and the adjacent Lake Hallowell subdivision is also in the same zone, RE-2/TDR. There is a zoning line that runs along the western boundary of the subject property, and the area to the west of the site is zoned R-200. The area to the south, across Route 108, is zoned RE-2/TDR.

Running east-west on the aerial photo is Route 108. Just on the edge of the aerial photograph, running north-south is Georgia Avenue. The subject property is located on the north side of MD Route 108, west¹² of Georgia Avenue and west¹³ of what is considered to be the edge of Olney Town Center. To the north of the subject property, is the Montgomery General Hospital. Also there are several residential subdivisions close to the subject property. To the east and to the south are Hallowell and Lake Hallowell which are a combination of single family and townhouse subdivisions. Hallowell is to the south of the site, across Route 108 and Lake Hallowell is to the northeast of the site. To the west of the subject property, there is a neighborhood of older houses that sit back around Route 108 in a relatively heavily forested area. There are three residential streets that abut the subject property. To the

¹² He meant "east," as is evident from the aerial photo (Exhibit 36) he was using to describe the area.

¹³ Same as the previous footnote.

north, Ft. William Drive, which has single-family, detached houses; Shotley Bridge Place to the east, which are townhouses; and Eaglesham Place, to the southeast, are single-family, detached houses.

On the opposite side or the south side of Route 108, in the Hallowell subdivision, there are townhouses. Between those townhouses and Route 108, there is an HOA open space parcel. There is also an HOA open space parcel between the subject property and the Lake Hallowell subdivision. So, the subject site does not actually directly abut the houses to the north and the east.

The neighborhood as defined by Park and Planning included properties approximately within a quarter mile of the subject property, but it stretched to the north to encompass Montgomery General Hospital. Mr. Foster would have excluded the Montgomery General campus because it has little linkage to the subject site. Tr. 94. The neighborhood includes the Winter Grove Adult Day Care facilities and the Williams Broad Thrift Shop. To the west of the property, along Prince Phillip Drive, there's a medical professional building along Route 108 and St. Peter's Church at the corner. On the south of Route 108, the neighborhood encompasses a fairly large section of Hallowell subdivision. Back on the northeast side of Route 108, it encompasses the majority of the Lake Hallowell subdivision.

Mr. Foster described the preliminary forest conservation plan (Exhibit 22(1)). It shows the area with the hatch on the eastern and northern boundaries of the subject property where Petitioner is proposing tree save areas, and that is the area that is proposed as a Category I Forest Conservation Easement. Petitioner is proposing tree clearing in the southwestern portion of the site, where the proposed building and parking lot will be located. Some significant specimen trees, 47 inch white oak, a 36 inch ash, another 36 inch ash, will be saved. Along the stream valley, Petitioner is proposing a very large tree save area, so that it will be providing all of its forest conservation on site. The plan was accepted by Park and Planning staff.

Using an illustrative plan for the building (Exhibit 10(a)), Mr. Foster noted that the building was irregular in shape to try to break up any views of the building from any angle. The grade at the entrance of Route 108 is roughly 476 grade. The first floor of the building will be at approximately 468, using the grade to “push” this building into the ground to make it shorter in appearance at the perimeter of the site. The same thing was done with the parking. Instead of parking directly in front of the building, the parking was pushed back to try to get as much of it behind the building as possible. Petitioner also established a greater landscape buffer along the Rings’ property and a proposed screening fence amongst all of the buffering between the subject parking lot and the Rings’ home, so when a six-foot fence is put on top of the retaining wall, only the two upper floors are visible from the Ring home.

To the north in the parking lot, there is a single loading space where the food deliveries will be made and the trash will be picked up. The trash location was originally a dumpster at the very rear of the property, but, after discussions with neighbors, Petitioner plans roll-out trash receptacles in the building, and there will be no dumpsters. There is a pathway system that’s located around the building. That’s a very important part of what Sunrise does with their residences. They are really creating garden rooms all the way around this structure to be used by their residents, and they’re broken up into different themes, different garden types, and that is all the way around the building.

Along Route 108, Petitioner will create a berm and a significant landscape buffer. There will be two storm water management facilities on the site, one in the southeast portion of the site, a sand filter storm water management facility, and a small facility in the northern end of the parking lot. The Landscape Plan (Exhibit 25(j)), depicts the tree save areas to the north and the east and the multitude of existing trees Petitioner will be saving in the forest conservation easement. It also shows along Route 108 the large specimen trees that will be saved and the berm, with the evergreens and deciduous plantings. It demonstrates the high level of landscaping around the building with multiple layers,

colors, seasonal plantings around all of the walks and garden rooms. It also demonstrates on the western boundary, the buffer that's being created along the Rings' property, and buffering on the eastern portion of the parking lot and along the northern end of the building to try to add as much screening as possible to buffer any views from the surrounding neighbors. This plan was revised in connection with meeting with the Rings and other neighbors.

Mr. Foster opined that there are no non-inherent adverse impacts, given the scale of the proposal and the buffering around the site. There's adequate parking for the residents, and there will be no traffic disruptions because there is adequate road capacity for the project. Mr. Foster also reviewed the general and special conditions for the special exception sought, and testified that, in his opinion, the proposal met all those conditions. Mr. Foster also opined that this proposal is consistent with the Olney Master Plan.

The property itself is located in a southern Olney planning area. Page 15 of the Olney Master Plan, under land use goals, calls for reinforcing the concept of Olney as a satellite community in the residential and agricultural wedge area; protecting the water; protecting the low density character of the southeast quadrant; and providing a wide choice of housing types in the neighborhoods for people of all income levels and ages, at appropriate densities and locations. Petitioner will be providing an additional housing type with additional age-in-place use that is not necessarily available currently in the Master Plan Area. Petitioner will project the water shed. Petitioner will also reinforce the concept of Olney as a satellite residential community.

On Page 59 of the Master Plan, the goal is to provide a mix of housing types in Olney, increase the opportunities for affordable housing and housing for the elderly. Petitioner will be providing additional housing types and providing a larger quantity of housing for an increasing elderly population in Montgomery County.

On Page 42, the Master Plan specifies that Special exception uses as defined by the zoning ordinance may be allowed if they meet the requirements for such uses as set forth in the zoning ordinance. Special exception projects should be compatible with the development patterns and adjoining uses in terms of height, scale, size, traffic, and visual impact of the structures and parking lots. In Mr. Foster's opinion, the proposed application is of a height and scale and size that it is compatible with the surrounding neighborhoods. It will not have an impact to the traffic of Olney and limited visual impact to the surrounding neighborhoods along Route 108.

On Page 62 of the Master Plan, under senior housing facilities in the Olney area, future special exceptions on some of the vacant and re-developable sites in and around the planning area could also add to the inventory of elderly housing in Olney. The Plan specifies that development should incorporate age-in-place strategies, which Petitioner has done.

Mr. Foster further testified that the project will have little or no impact on the single-family and townhouse developments in the general area. The building is designed to be compatible with the residential neighbors and is an appropriate residential use for the property. The nearest residence to the west is over 150 feet from the proposed building, and the western boundary of the property will be heavily screened. The closest houses on the adjacent community, Lake Hallowell, are over 300 feet from the proposed building and the adjacent stream valley provides a larger buffer to the community. Mr. Foster introduced a new illustrative plan (Exhibit 37) showing distances to the nearest homes.

It is approximately 347 feet from the closest corner of the proposed building to the closest corner of the single family house on Eaglesham. On Shotley Bridge, to the northeast, the closest portion of the building is 324 feet from the closest townhouse. To the north, on Ft. William Drive, the closest point from the building to the closest single family house is approximately 449 feet. The Ring home to the

west is approximately 176 feet away (as measured through the patio), and about 150 feet away from the proposed building if measured directly.

As shown on section maps (Exhibits 22(j) and (k) and 38), there will be a very significant buffer between the proposed building and the homes to the northeast on Shotley Bridge, Eaglesham and Ft. William Drive, including the HOA open space parcel and the stream valley buffer that Petitioner is preserving to create a very wide tree save area. However, Mr. Foster indicated that the proposed building would be “visible through the under-story.” Tr. 73. In his opinion, the project will be in harmony with the general character of the neighborhood, and the scale and size of this building and bulk of building will be compatible, and it is appropriate for this site. The proposed use does not predominantly alter the residential nature of the area. The spillage of lighting will not exceed 0.1 foot candles at the property line. The proposed use is a low intensity and non-intrusive, so as not to affect the adjacent areas.

Mr. Foster further testified that police and fire services are nearby, and all of the necessary public facilities are available on or adjacent to the site. Water and sewer are in Route 108, along with electric, telephone and cable. A preliminary plan of subdivision will be required, and there will be an additional adequate public facilities review at that time.

Mr. Foster indicated that the proposal complies with all the development standards for the zone and all parking requirements. It is not in a special protection area, and the proposal will comply with a forest conservation plan. No trees will be removed within the forest conservation easement area. Removing other trees on the site will have minimal environmental impact, in Mr. Foster’s opinion. All signs posted by Petitioner will meet applicable standards, and permits will be obtained.

Mr. Foster opined that the proposed use meets and exceeds all the criteria and standards for nursing home and domiciliary care home as set forth in the Montgomery County Zoning Ordinance. He

indicated that the plans would be revised to make it more clear that the buffering between the Rings' home and the proposed facility would be retained.

Mr. Foster added that, after discussions with the townhouse owners, Petitioner added more landscaping at the edge of the structure. It is both at the bottom of the retaining wall that runs along the back of the property and also occurs at the top of the retaining wall so, in fact, it's helping to mitigate and block the mid-level under-story views from the homes (*e.g.* on Shotley Bridge Place) to the east/northeast across of the proposed Sunrise building. Tr. 173-176.

Finally, he mentioned that in the middle of the building's roof, there will be mechanical uses, and part of the roof will be green, as well.

3. Mike Workosky (Tr. 111-130):

Mike Workosky testified as an expert in transportation planning. Mr. Workosky described the surrounding road network, and noted that there is an existing curb cut at the site and a driveway stub-out that anticipated access to that location. There is also an existing left turn lane in the median for eastbound traffic on MD Route 108, which will allow a left turn directly into the site.

Mr. Workosky observed general traffic conditions primarily during the morning peak hour. In his opinion, "the traffic generally seems to be acceptable without major delays and constraints in the field. I was able to make turning movements at the existing curb cut without any delay." Tr. 114. There are large gaps that are created by traffic signals that are located both at Old Baltimore and Prince Phillip, so that tends to create large gaps for vehicles to turn in and out of the driveway.

Mr. Workosky prepared a traffic statement. He collected traffic counts at the Prince Phillip intersection and at the Old Baltimore Road intersection and then collected "a link volume count"¹⁴ along

¹⁴ Mr. Workosky explained that "link volume" in this context is a traffic engineering term used by the ITE to measure the volume of traffic on a road segment between two intersections. "It's just another way of looking at what the traffic impact's going to be." Tr. 118. The CLV is a measure of how the intersection itself functions; while the link volume helps

Route 108. Then he calculated the number of trips that would be generated by the building based on observed information collected at another Sunrise facility. He also calculated based on the LATR rates that are published and on what the Institute for Transportation Engineers (ITE) would require. Under the most conservative of those conditions, which is the observed rates at the other Sunrise facility, he found that it would generate a combined inbound and outbound total of 24 a.m. peak-hour trips and 24 p.m. peak-hour trips. That is below the 30 trip threshold set by LATR for measurable impact.

Peak-hour traffic counts were collected on a typical weekday, and the critical lane volume at the Prince Phillip and at the Old Baltimore Road intersections was calculated. Prince Phillip operates at just below 1,000 CLV and Old Baltimore Road is at 1263. Since the standard in the Olney area is 1450 for critical lane volume (under the old growth policy), there is available capacity at both of those intersections. Mr. Workosky did not believe that the standard had changed under the new growth policy, but he agreed that since this matter would have to go to subdivision, the new growth policy would apply, including the requirements of PAMR (Policy Area Mobility Review).

Applying the number of trips that would be generated at both of those intersections and also the link volume, Mr. Workosky found that there would be a minimal increase in that volume, roughly 1 percent, and the same with regards to critical lane volume movements at the intersections. There would be little or no change. It appears that there's adequate capacity, and there are public transportation facilities there as well. There are also shared-use paths for pedestrians and bicycles along those routes. Mr. Workosky concluded that the proposed development would have very little impact on traffic and would be in harmony with the neighborhood from that perspective. Tr. 121. He added that it would not adversely affect the present character or future development of the community due to traffic. Tr. 122.

determine whether there are enough lanes to serve the traffic on that link. It is a separate analysis in terms of capacity and also a measurement of the effect of any development.

Mr. Workosky also opined that access to the site is safe, adequate, and efficient for both vehicles and pedestrians. Tr. 122. He noted that PAMR will require 25 percent mitigation of traffic in this case, which means mitigating the equivalent of six peak hour trips. There are a combination of methods that Petitioner can use to achieve the 25 percent reduction. Those may include bus shelters or bus stops with benches, transit signs, and those types of features. [This point raised the issue of how the Board of Appeals should be informed of changes to the site plan required at subdivision to meet PAMR requirements. Tr. 123-130. The Hearing Examiner concluded that he would recommend a condition requiring Petitioner to file any site plan revised at subdivision with the Board of Appeals.]

4. Steven Ruiz (Tr. 131-159; 171-173):

Steven Ruiz testified as an expert in architecture. He has been designing Sunrise facilities for 19 years. He described the various models used by Petitioner, and indicated that the “I” model best fits the subject site. Mr. Ruiz introduced two computer generated renderings of the three-story I building planned for the site (Exhibits 10(b) and 42). The building is designed to jut in and out, so that one never sees the whole building at one time. A Victorian style is used because it fits in almost anywhere , and the styles and cladding of the windows are adjusted to what's best suitable for that neighborhood. The traditional Victorian farmhouse is very common in this area. The siding size and styles are varied in bands, and the windows are varied in size to break up the view. A porch is included as an inviting feature and a portico protects elderly residents who take longer to move in and out.

The roof has gables and is mansard, which hides the roof equipment, such as generators. The building will have a 22,000 square foot footprint, which is a little bit over 10 percent of the building site. So, that's the nice thing about going three stories to keep this building down with all these tremendous setbacks. Mr. Ruiz also expressed pleasure with the size of the setbacks in this case, and noted that the

building would be pushed down to reduce its apparent height, so it will be a half story below the normal starting point.

Mr. Ruiz then discussed floor plans for the facility, noting that there would be a grand foyer, dining room and bistro, and that there would be different public spaces on every floor.

According to Mr. Ruiz, external lighting will be similar to a residential home. The height of the light poles, to the bulb, is about 7 feet, and the fixture will have a 43 watt florescent bulb, so the light spread isn't that great. It will be enough to meet the code, but the spillage off the site will not exceed one-tenth foot candle as required by the code. There is no light spillage at all to the north and to the east and southeast where no photometric measurements are shown on Exhibit 25(f). Also, the driveway goes down six to eight feet down, so the actual amount of light spillage will likely be less than the computer program projected in the photometric study. It's actually the worst case scenario if the lights were higher. The sign will be illuminated with 43 watt spots aimed directly at the sign. A sign permit will be obtained.

At the request of Mr. Knopf, Mr. Ruiz indicated that he would see whether a residential style fixture with a cutoff to prevent any lighting to the west of the site could be used. At Mr. Klauber's suggestion, Petitioner will submit a revised lighting plan showing cut sheets for the proposed fixtures with the overall lighting plan.

Mr. Ruiz opined that the facility will not have a negative impact, inherent or non-inherent, because of the size of the lot and the type of use. The structure will be very typical of this type of facility. It will be compatible and in harmony with the general character of the neighborhood, considering design, scale, and bulk of the proposed structure. It will be "a very nice residential facility that fits in with the area." Tr. 153. The materials on the outside will be similar to that used in nearby

townhouses and single family homes, so the facility will be very much in context and in harmony with the area, especially on such a large site. This is one of the largest sites that Petitioner has for 74 units.

On cross-examination, Mr. Ruiz indicated that sound from the air conditioning and generators will be reduced because they are on the roof and the roof is mansard, so they are in a well and the sound will go up. It will be a concrete roof which allows a very solid attachment without vibrations. He did not feel that they needed sound deadening armor around it, but Petitioner will submit additional information indicating that the noise will not exceed the county requirements.

5. Seth Churchill (Tr. 160- 171):

Seth Churchill testified as an expert in civil engineering. He indicated that, at this stage, the engineer generally makes sure that the utilities are available, and ensures compliance with the county regulations for storm water management. Petitioner's proposal for storm water management for the site is to provide quality treatment by a ground water recharge. Ground water recharge devices are sprinkled throughout the site and clustered on northeastern side of the building away from Route 108. An additional cluster will be in the front near Route 108. The primary devices are sand filters. Pond 1 is towards the northern end of the site, at the extreme end of the parking area. It is a small sand filter that treats about six-tenths of an acre and pond number 2 treats the remainder of the site.

Recharge facilities treat the first flush of the cleanest water coming from the site which comes from the rooftops, and the filter devices are designed to store and treat up to one-inch rainfall event. The recharge is provided through storm chamber facilities. The sand filters polish the water. Surface runoff is treated by filtering it from the surface through the sand and out through an under-drain, which enters the stream valley. The dirtiest water from the vehicular areas enter the storm drain system, goes through a hydrodynamic separator that is designed to take out oils and grit, and it goes down to a flow splitter where everything up to a one inch storm is split off from the system, passes through the filter, and

all greater storm flows go around it so there's no flushing of the sand filter itself. It's all towards quality control.

Mr. Churchill further testified that on a site of this size, with dispersed outfalls, those outfalls are likely to be under the 2 cubic feet per second (CFS) Rule. If you have no point discharges in excess of 2 cubic feet per second per one-year storm event, quantity control (*i.e.*, channel protection) is not required. In his opinion, that will be the case here. His studies show that, given the way the water's distributed, his proposal keeps it below the 2 CFS and in tune with the requirements of the Department of Permitting Services. DPS promotes this because it most closely mimics the existing hydrology of the site and, therefore, minimizing the changes from existing to proposed conditions. Petitioner's concept plan (Exhibit 22(n)) is being reviewed by DPS, and in Mr. Churchill's professional opinion, the proposed storm water management plan is adequate to serve the site and meets all the requirements of the State of Maryland and the Montgomery County ordinance that's enforced by the Department of Permitting Services. Each of the individual components is a best management practice. The recharge chambers, sand filters, hydrodynamic separators, and the sand filter number 1, which has a grass swale for pretreatment, is the BMP as well. The SWMP will have to be approved by DPS before subdivision.

Mr. Churchill is also looking into incorporating a green roof into the design of the building, which will enhance the stormwater management. The green roof provides an additional level of filtration. With the smaller rain events, there actually wouldn't be much runoff immediately, if at all, from that portion of the roof which has the green material. That water is trapped, and much of it can be evaporated back without runoff, and that is, in essence, treated as it would be on a grassy surface. Any green roof that might be developed as part of this project will not cause any portions of the roof to go above the elevations that have been presented.

According to Mr. Churchill, all of the necessary utilities, water, sewer, gas, electric, and telephone are available across the site frontage. The proposed special exception is served by adequate public facilities including schools, police, and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. Sub-section 59-G-1.23(e), which requires that the special exception plan be consistent with the water quality plan, does not apply to this case because water quality plans specifically apply to special protection areas, and this site is not in a special protection area.

B. Community Participants

1. Allen Abel (Tr. 98-103):

Allen Abel testified that he lives at 17811 Shotley Bridge Place, Olney, Maryland. He has been living there for only two months and was “quite astonished and obviously discouraged to learn about this project.” Tr. 98. Mr. Abel adopted the statement in his letter (Exhibit 28) which summarizes his objections.

Mr. Abel used Exhibit 37 to show the location of his home and the block of eight townhomes. He argued that a “looming 64,000 foot three story building whose finished floor level is higher to begin with than ours is could certainly not be said to not have any negative impacts. . . . I certainly believe that this will have negative effect; that is detrimental to the use and enjoyment certainly of our property along Shotley Bridge to have a three story building 100 yards away; that it is clearly not to the size and scale from the size, scale, density and bulk of a 4,100 square foot residence; certainly not in any way in harmony with the general character of these townhomes and that [it] is ludicrous to suggest that it will be little or no impact. . . . I think it is clear and obvious it will be detrimental to the use and enjoyment and value of our home.” Tr. 99 – 100.

Mr. Abel stated that “. . .the challenge to us is to try to show that there is a non-inherent adverse impact. I am not claiming that there are impacts specific to a residential nursing home that are different

from impacts that would be if there were eight single family homes there with 30-40 residents each producing sewage and trash, each having cars making trips on 108. That's not what we would argue. But, since the special exception requires that there be minimal impact to the natural environment, that it does not have negative effects, not be detrimental to the use and enjoyment and value, that it be of little or no impact, that it be in harmony with general character it's so obvious and evident to us that it's not that we intend to continue to present this case as this proceeds." Tr. 101-102.

[The Hearing Examiner explained that he must go by the evidence, and usually that takes some expert evidence on this kind of point; that zoning is not a plebiscite, but that his statements would be considered.]

Mr. Abel asked whether site visits by the Board or the Hearing Examiner are customary, and the Hearing Examiner explained that evidentiary site visits are unusual because the parties must be present, but that the Hearing Examiner often visits the site to better understand the evidence submitted by the parties, if there is no objection. When asked, neither side objected to his doing so in this case.¹⁵

2. Mary Clare Roeder (Tr. 104-110):

Mary Clare Roeder testified that she has lived at 17801 Shotley Bridge Place for four and a half years. She stated that she disagrees with much of what Petitioner's expert's said about "light, noise, traffic, and our enjoyment. If you're there this time of the year, for example, when there are no leaves on the trees[,] I can see the Ring's house from my house. I can see through 108 from my house. So, clearly, I would be able to see Sunrise and so I would like to make sure that it's very clear because it was said by one of the other witnesses, you know, limited sight or perhaps you'd be able to see it. I know for a fact based on what I can see now that I would be able to see it." Tr. 104.

¹⁵ The Hearing Examiner did visit the site for that purpose on January 20, 2008, and is able to understand the concerns expressed by the neighbors northeast of the site about their view of the property through the trees, especially in winter when the trees are without leaves.

Mrs. Roeder added that the main reason that she bought her home was because there was a wooded area behind it, and she would therefore like as much of a barrier, as many trees saved, as possible. She also expressed concern about the environmental impact “because more and more development is happening in our area and more and more green spaces are being eliminated. I think there have been too many exceptions as there is and I think our area is over-developed.” Tr. 105.

Mrs. Roeder further testified that the proposed facility will not be in harmony the nearby homes, given its height. She also felt that it would produce more traffic than Petitioner predicts because other facilities, such as Good Council high school, have slowed down traffic on Route 108 and created noise. Even though there will be seniors living there who won’t be driving, there will be deliveries, staff members and visitors, creating a traffic impact. [The Hearing Examiner noted that his review of traffic issues in this proceeding is somewhat limited because this project must go through subdivision.]

Mrs. Roeder expressed concerns about the 7:00 a.m. deliveries because of noise, traffic and safety issues for high school students out and about at that time.

3. Norman Knopf, Esquire, for John and Janet Ring (Tr. 178):

Norman Knopf stated that his clients, John and Janet Ring, were initially very disappointed to see the subject site being developed; however, they were very pleased that Petitioner’s representatives were willing to sit down and work so well with them to mitigate the impacts on their property. Because Petitioner was successful in providing numerous means of landscaping, fencing and other measures to effectively provide less impact and prevent adverse conditions, the Rings are supporting this project.

C. The People’s Counsel

Martin Klauber, the People’s Counsel, did not call any witnesses, but he participated in the proceeding, and made suggestions regarding possible conditions. Tr. 178-186. Mr. Klauber indicated

that even though the Zoning Ordinance does not require a showing of need for this type of special exception, the testimony demonstrating need is evidence that the facility would be in the public interest, which is a factor to be considered. Tr. 32.¹⁶ Mr. Klauber also urged that Technical Staff's recommended weekday time limit of 8:30 a.m. for deliveries and trash pickups be restored, and suggested that a log of deliveries be required to insure compliance. He asked that a log be kept of the number of employees present at any one time.

The Hearing Examiner asked Petitioner's counsel and the attorney for the Rings what happened before the Planning Board to cause the time limits to be changed. Ms. Bar replied that, particularly with respect to food service and medical supplies, Sunrise's experience at its other facilities is that the more restricted hours would be too limiting on their operation and so they requested that they be extended. According to Ms. Bar, this issue was discussed at the Planning Board meeting, and Staff ultimately did not have a problem with changing the time limits. The Board agreed that the change was appropriate, given the operational aspects, the elimination of the dumpster, the location of the trash room inside and the fact that the Rings, who would be most affected, did not oppose the change. Ms. Bar noted that the impacts are really on the western side of the property, near the Rings, not where the Roeders live.

Mr. Knopf stated that his clients, the Rings, do not have a problem with the 7:00 a.m. to 7:00 p.m. weekday delivery and garbage cutoffs, as opposed to the 8:30 to 5:00. "Their principal concern was to the dumpster and garbage noise and that's been resolved." Tr. 181.

Mr. Klauber also asked that language in condition number 6 recommended by Technical Staff be amended to reflect that approval of a traffic mitigation agreement must be made by the Planning Board, and not by Technical Staff.

¹⁶ The court reporter mislabeled Mr. Klauber's comments as coming from Mr. Knopf.

Finally, Mr. Klauber recommended creation of a community liaison council (CLC), consisting of representatives from the Greater Olney Civic Association (GOCA), Lake Hallowell, Hallowell, the Rings and Shotley Bridge Place, with the People's Counsel as an *ex officio* participant. The CLC would meet two times a year with Petitioner, and minutes should be kept. Petitioner's counsel agreed to this condition.

Mr. Klauber ultimately recommended that the petition be granted. Tr. 182-183.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards.

Weighing all the testimony and evidence of record under a "preponderance of the evidence" standard (Code §59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as Petitioner complies with the conditions set forth in Part V, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Code § 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects on nearby properties and the general neighborhood from the proposed use at the proposed location. Inherent adverse effects are "the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations." Code § 59-G-1.2.1. Inherent adverse effects, alone, are not a sufficient basis for denial of a

special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a domiciliary care home (*i.e.*, an assisted living facility). Characteristics of the proposed domiciliary care home that are consistent with the “necessarily associated” characteristics of domiciliary care homes will be considered inherent adverse effects, while those characteristics of the proposed use that are not necessarily associated with domiciliary care homes, or that are created by unusual site conditions, will be considered non-inherent effects. The inherent and non-inherent effects thus identified must then be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff described the physical and operational characteristics necessarily associated with a domiciliary care home as follows (Exhibit 24, page 6):

The inherent characteristics of a domiciliary (assisted living) care home include: (1) buildings and structures, as well as outdoor passive areas for the residents and visitors; (2) lighting; (3) delivery of food and materials for the operation and maintenance of the assisted living facility; (4) traffic associated with trips to and from the site by employees, visitors and residents engaged in off-site activities.; (5) parking areas to accommodate visitors and staff; (6) dust and noise associated with the loading and unloading of food and equipment and garbage pick-up; and (7) noise from ambulances in emergencies.

To this description, the Hearing Examiner would add that one would expect a domiciliary care home to produce some noise generated by equipment for the facility and by occasional outdoor activities of residents and their families. The Hearing Examiner believes that these factors are inherent

in all domiciliary care homes, by their nature, although their impact will vary significantly according to the nature of the domiciliary care home, its size and its location.

In the subject case, because the residents will be elderly and unlikely to drive, a relatively small amount of additional traffic will be generated, mostly by staff and visitors. In analyzing the inherent and non-inherent impacts of the proposed facility, Technical Staff concluded (Exhibit 24, pp. 6-7):

In reviewing this case, staff has not identified non-inherent effects that would adversely impact the area. Staff finds that the size, scale and scope of the proposed use are minimal and are not likely to result in any adverse noise, traffic disruption or any environmental impact. Additionally, there are no unusual characteristics associated with the proposed use.

Adequate parking is available for the residents, guests and employees of the proposed assisted living facility. The applicant is proposing a Victorian style architecture that will blend with the surrounding area and is providing an ample landscape buffer along Olney-Sandy Spring Road to retain the residential character of the street, creating a 58-foot building setback.

The Hearing Examiner recognizes that the size and mass of a particular domiciliary care home could be so excessive, or its setbacks so inadequate, given the nature of the site, as to be considered non-inherent characteristics, but that is not the case here. As discussed in Part II. G of this report, the proposed domiciliary care home will be housed on a large lot, will have substantial setbacks and will be mostly screened by surrounding forest and landscaping.

Accordingly, the Hearing Examiner finds no non-inherent characteristics of the proposed domiciliary care home, and agrees with Technical Staff's conclusion that it is compatible with adjacent development.

B. General Conditions

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the testimony and exhibits of the Petitioner provide ample evidence that the general standards would be satisfied in this case.

Sec. 59-G-1.21. General conditions.

§5-G-1.21(a) -*A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) Is a permissible special exception in the zone.

Conclusion: A domiciliary care home is a permissible special exception in the RE-2/TDR Zone, pursuant to Code §§ 59-C-1.31 and 1.331.

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

Conclusion: The proposed use complies with the specific standards set forth in § 59-G-2.37 for a domiciliary care home, as outlined in Part C, below.

(3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

Conclusion: The subject site lies within the area analyzed by the 2005 Olney Master Plan, which was discussed in Part II. D. of this report. Although the Master Plan does not include specific recommendations for this site relating to nursing and/or domiciliary care facilities, the Plan does acknowledge the need for such a facility in this area due to the aging population. Pages 59-62.

The Master Plan also provides that special exceptions “should be compatible with the development pattern of the adjoining uses in terms of height, size, scale, traffic and visual impact of the structures and parking lots.” Page 42. Community-Based Planning staff, in their memorandum dated December 10, 2007, state that the proposed assisted living facility is compatible with the surrounding land uses and structures, due to the 58-foot wide building setback and the fact that the parking lot is located along the western side, away from the street frontage. See Exhibit 24, Attachment 8.

On page 15 of the Master Plan, one of the land use goals is to provide a wide choice of housing types in the neighborhoods for people of all income levels and ages. Similarly, on page 59 of the Master Plan, the goal is to provide a mix of housing types in Olney, and to increase the opportunities for affordable housing and housing for the elderly. The Master Plan also mentions that the inventory of elderly housing in the Olney area could be expanded by special exceptions on some of the vacant and re-developable sites in and around the planning area. Page 62. That is the plan here.

The Hearing Examiner also notes that the Master Plan does not recommend a change in the current RE-2/TDR Zone, and the use sought here is permitted by special exception in that zone. It is therefore fair to say that it is consistent with the goals of the Master Plan.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

Conclusion: The proposed use will be in harmony with the general character of the neighborhood because it will occupy a large lot, with sizable setbacks and abundant screening. The

facility is designed to have a residential appearance and architectural features which will avoid a monolithic visage. Traffic production will be minimal, and parking will be set back in accordance with the Code and well screened. *See* Part II. F. of this report. As stated by Technical Staff (Exhibit 24, p. 8),

This use will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk, traffic and parking conditions and number of similar uses. The site is being developed with minimal impact on the natural environment [and] . . . is compatible with the residential densities of the neighborhood.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: As discussed in Part II. G. of this report and in response to General Standard 4, above, the evidence supports the conclusion that this project will be compatible with its neighbors, and there is no competent evidence that it will reduce the economic value of surrounding properties, all of which will be quite far from the proposed facility. The closest home is the Rings house to the west, and it is 150 feet from the proposed building. The Rings support the petition. The next closest house is on Shotley Bridge Place, 324 feet from the proposed building, across what will be a forest conservation area. The Hearing Examiner agrees with Technical Staff's conclusion that "[t]he proposed use will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site." Exhibit 24, p.8.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Based on the nature of the proposed use, the special exception would cause no objectionable vibrations, fumes, odors, dust, or physical activity at the subject site. As discussed in Part II.G. of this report, noise will not exceed County limits and will be controlled by conditions recommended in Part V of this report. Petitioner's revised lighting plan and photometric study (Exhibit 56), discussed in Part II. C. of this report, satisfy the Hearing Examiner that the illumination and glare will be kept within prescribed limits.

(7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

Conclusion: Technical Staff lists five existing special exceptions in the area:

1. Montgomery General Hospital: 1810 Prince Phillip Drive. Multiple Special Exception requests: CBA-2521- (A-H), BAS 1920, BAS 1921, S-511, BAS-343
2. Montgomery General Hospital: 2805 Olney-Sandy Spring Rd. BAS 1920, and BAS 1921. Request for a group residence (9-14 elderly persons)
3. Montgomery General Hospital: 2805 Olney-Sandy Spring Rd. S-511. Request for a thrift shop.
4. Town and Country Animal Clinic: 2715 Olney-Sandy Spring Rd. BAS-715 and BAS-715A. Request for a veterinary clinic.
5. St. Andrews Kim Korean Catholic Church: 17615 Old Baltimore Rd. S-2441. Request for the development and operation of 75 one-bedroom apartments, elderly independent low-income and one-bedroom apartment of resident manager.

Nevertheless, Staff concludes that "approval of this special exception request will not increase the number, intensity or scope of special exception uses sufficiently to adversely

affect or alter the predominantly residential nature of the area.” Exhibit 24, p. 9. The Hearing Examiner agrees because the proposed special exception is consistent with the recommendations of the applicable Master Plan and will not change the predominantly residential nature of the area.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site. On the contrary, it will provide a residential facility for the elderly that is needed in the area.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

Conclusion: The special exception sought in this case would require approval of a preliminary plan of subdivision. Therefore, the adequacy of public facilities will be determined by the Planning Board at subdivision, and approval of the preliminary plan of subdivision is a recommended condition in Part V of this report, as required by this section of the Zoning Ordinance. Nevertheless, the evidence, which is discussed in Part II. F. of this report, supports the conclusion that the proposed special exception would be adequately served by the specified public services and facilities.

- (i) *If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision*

approval must be included as a condition of the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Transportation Review, as required in the applicable Annual Growth Policy.

Conclusion: As discussed above, the adequacy of public facilities will be determined by the Planning Board at the time of subdivision review.

- (ii) *With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.*

Conclusion: Technical Staff found that “[t]his project will not reduce the safety of vehicular or pedestrian traffic.” Exhibit 24, p. 10. This finding is supported by the testimony of Petitioner’s traffic engineer, Mike Workosky. Tr. 122. There being no competent evidence to the contrary, the Hearing Examiner so finds.

C. Specific Standards

The testimony and the exhibits of record (including the Technical Staff Report, Exhibit 24) provide sufficient evidence that the specific standards required by Section 59-G-2.37 are satisfied in this case, as described below.

Sec. 59-G-2.37. Nursing home or domiciliary care home.

(a) A nursing home of any size, or a domiciliary care home for more than 16 residents (for 16 residents or less see “Domiciliary care home”) may be allowed if the board can find as prerequisites that:

(1) the use will not adversely affect the present character or future development of the surrounding residential community due to bulk, traffic, noise, or number of residents;

Conclusion: This specific standard is essentially a summary of the general standards 4, 5 and 6, above.

For the reasons discussed therein, the Hearing Examiner finds that the use will not adversely affect the present character or future development of the surrounding residential community due to bulk, traffic, noise, or number of residents.

(2) the use will be housed in buildings architecturally compatible with other buildings in the surrounding neighborhood; and

Conclusion: As pointed out by Technical Staff, the proposed architecture is based on a “Victorian farmhouse style” with several peaks which will provide an illusion of several roof line elevations. Petitioner’s architect, Steven Ruiz, used a variety of techniques to ensure architectural compatibility with the residential neighborhood, including low porches, a *port cochere*, varied siding and window styles to break up the view, and a design in which the building juts in and out, so that one never sees the whole building at one time. The Hearing Examiner agrees with Technical Staff’s conclusion that “the assisted living facility is architecturally compatible with other buildings in the surrounding neighborhood.” Exhibit 24, p. 11.

(3) the use will be adequately protected from noise, air pollution, and other potential dangers to the residents.

Conclusion: As discussed in Part II. G. of this report, the facility will have a heating, ventilation and air conditioning (HVAC) system, and noise will be maintained within County standards. On-site security will be provided through the use of a “resident concierge manager” during business hours, and admittance will be electronically controlled by a staff member after the evening meal. Each of the care managers carries a wireless system which can

identify residents if there is an emergency, and there is a 24-hour personal emergency response system to protect the residents. Tr. 38 and 41.

- (4) *The Board of Appeals may approve separate living quarters, including a dwelling unit, for a resident staff member within a nursing home or domiciliary care home.*

Conclusion: Not applicable. Petitioner is not proposing separate living quarters for staff.

- (b) *The following requirements must apply to a nursing home housing 5 patients or less:*

* * *

Conclusion: Not applicable. The proposed facility will house more than 5 patients.

- (c) *The following requirements apply to all new nursing homes, additions to existing nursing homes where the total number of residents is 6 or more, and to all domiciliary care homes for more than 16 residents.*

- (1) *The minimum lot area in the rural zone must be 5 acres or 2,000 square feet per bed, whichever is greater.*

Conclusion: Not applicable. Subsection (1) applies only to rural zones.

- (2) *In all other zones, the minimum lot area must be 2 acres or the following, whichever is greater:*

- a. *In the RE-2, RE-2C, RE-1 and R-200 zones, 1,200 square feet for each bed.*
- b. *In the R-150, R-90, R-60 and R-40 zones, 800 square feet for each bed.*
- c. *In the R-T, R-30 and R-20 zones, 600 square feet for each bed.*
- d. *In the R-10, R-H, C-O, C-T and C-2 zones, 300 square feet for each bed.*
- e. *In the town sector and planned neighborhood zones, 800 square feet per bed.*

Conclusion: This site is classified in the RE-2/TDR Zone and therefore subsection “a.” applies.

Petitioner proposes a maximum of 94 beds. At 1200 square feet per bed, Petitioner must have a minimum lot of 112,800 square feet. The subject property is 213,092 square feet (4.89 acres), which is almost twice this minimum standard.

(3) Minimum side yards are those specified in the zone, but in no case less than 20 feet.

Conclusion: All side-yard setbacks will exceed 100 feet, which far exceeds both the zone’s requirements (17 feet on a side and 35 feet combined) and this section’s 20 foot minimum.

(4) Maximum coverage, minimum lot frontage, minimum green area, minimum front and rear yards and maximum height, are as specified in the applicable zone.

Conclusion: According to Technical Staff, the proposed facility will meet all applicable standards for the RE-2/TDR Zone. Exhibit 24, p. 12. This fact is displayed on the next page in a Table from page 13 of the Technical Staff report. Some minor mistakes in the chart have been corrected by the Hearing Examiner.

(d) Off-street parking must be provided in the amount of one space for every 4 beds and one space for 2 employees on the largest work shift, except the board may specify additional off-street parking spaces where the method of operation or type of care to be provided indicates an increase will be needed.

Conclusion: Parking compliance is shown in the following Table from Exhibit 24, p. 13. Based on Zoning Ordinance §59-E-3.7, a minimum of 39 parking spaces would be required. Petitioner will provide 45 spaces, including two handicapped spaces.

Table 2: Development Standards- RE-2/TDR/Domiciliary Care Special Exception

Development Standards	Requirement	Provided
Minimum Tract Area (§59-C-1.321(a))	N/A	213,092 (4.89 AC)
Maximum Density (d.u./usable acre) (§59-C1.32(b))	N/A	N/A
Lot Area (§59-G-2.37(c)(2)a.)	1,200 SF/bed or 2 ac, whichever is greater (94 beds*1,200 SF= 112,800 SF)	213,092 SF
Lot Width (§59-C-1.322(b)): @ Front of Bldg Line @ Street	150' 25'	±520' ±425'
Yard Requirements (main building): From Street (§59-C-1.323(a)) From Adjoining Lot Side Yards (§59-G-2.37(b)(3)) One Side Both Sides Rear Yard (§59-C-1.323(b))	50' 17' (20' per §2.37(c)(3)) 35' (40' per §2.37(c)(3)) 35'	58' ±102' ±245' ±222'
Building Height (maximum) (§59-C-1.237)	50'	43'-5" (ridge line)
Coverage (maximum net lot area) (§59-C-1.328)	25%	11% (after revisions)
Parking/Loading Facilities Setback (§59-E-2.83) Front/Rear Yard of applicable zone Side Yard (2xs side yard of applicable zone)	50'/35', respectively 35' (17*2)	±165'/70' 35'
Off-Street Parking (§59-E-3.7) Residential Units – 1 space/4 beds Employees- 1 space/2 employees	(94/4) + (30/2) = 39	45 (43 standard, 2 HC)
Driveways (§59-E-2.41) Entrance/Exit 2-way drive aisle	Min. of 20' in width Min of 20' in width	20' minimum 20' minimum

(e) An application must be accompanied by a site plan, drawn to scale, showing the location of the building or buildings, parking areas, landscaping, screening, access roads, height of buildings, topography, and the location of sewers, water lines, and other utility lines. The site plan must also show property lines, streets, and existing buildings within 100 feet of the property, and indicate the proposed routes of ingress and egress for automobiles and service vehicles. A vicinity map showing major thoroughfares and current zone boundaries within one mile of the proposed home, must be included.

Conclusion: Petitioner has provided a Site Plan meeting these requirements, the final version of which is Exhibit 52(b).

(f) An application for a special exception for this use must include an expansion plan showing the location and form of any expansions expected to be made in the future on the same site.

Conclusion: Not applicable. Petitioner is not proposing any expansions in the future.

(g) Any nursing home, or domiciliary care home for more than 16 residents lawfully established prior to November 22, 1977, is not a nonconforming use, and may be extended, enlarged or modified by special exception subject to the provisions set forth in this section.

Conclusion: Not applicable.

(h) Any application for nursing home and/or care home which is pending at the Board of Appeals as of February 24, 1997 at the request of the applicant, may be processed under the applicable provisions of the Zoning Ordinance in effect at the time the application was filed.

Conclusion: Not applicable.

D. Additional Applicable Standards

Section 59-G-1.23. General development standards.

(a) Development Standards. Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.

Conclusion: The Table displayed on the preceding page demonstrates compliance with all applicable development standards.

(b) Parking requirements. Special exceptions are subject to all relevant requirements of Article 59-E.

Conclusion: The Table displayed on the preceding page demonstrates compliance with all applicable parking standards.

*(c) Minimum frontage * * **

Conclusion: Not applicable, since none of the listed uses are involved and no waiver is being sought.

(d) Forest conservation. If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.

Conclusion: The proposed special exception complies with the preliminary forest conservation plan, which is in the record as Exhibit 22(l). Tr. 82. Since this case must go through subdivision, the Planning Board will review the final forest conservation plan at that time.

The following condition has been recommended in Part V of this report:

The proposed development must comply with the conditions of the Preliminary Forest Conservation Plan, dated December 11, 2007, until approval of the Final Forest Conservation Plan by the Planning Board, after which time Petitioner must comply with the terms of the Final Forest Conservation Plan.

(e) Water quality plan. If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.

Conclusion: Water Quality Plans are used in special protection areas (SPAs), as specified in Zoning Ordinance §59-A-2.1. Since the subject site is not in an SPA, this provision is inapplicable to this case. Tr. 82-83.

(f) Signs. The display of a sign must comply with Article 59-F.

Conclusion: Petitioner plans to have a sign at the entrance, and its location is shown on the site and landscaping plans. The Hearing Examiner recommends the following condition in Part V of this report: "A sign permit must be obtained for any sign, and a copy of the permit

and diagram of the approved sign should be submitted to the Board of Appeals before the sign is posted.”

(g) *Building compatibility in residential zones. Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.*

Conclusion: As mentioned above, Technical Staff and the Hearing Examiner concluded that the residential character of the subject site will be maintained, given the architectural design of the planned structure, and its setting, setbacks and landscaping. It will thus be compatible with the neighborhood.

(h) *Lighting in residential zones. All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:*

(1) *Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.*

(2) *Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.*

Conclusion: As discussed elsewhere in this report, the lighting will be residential in character, and will not cause glare on adjoining properties, nor exceed the 0.1 foot-candle standard at the side and rear property lines.

Section 59-G-1.26. Exterior appearance in residential zones.

A structure to be constructed, reconstructed or altered pursuant to a special exception in a residential zone must, whenever practicable, have the exterior appearance of a residential building of the type otherwise permitted and must have suitable landscaping, streetscaping, pedestrian circulation and screening consisting of planting or fencing whenever deemed necessary and to the extent required by the Board, the Hearing Examiner or the District Council. Noise mitigation measures must be provided as necessary.

Conclusion: As discussed above, the planned structure will have a residential appearance and will be appropriately landscaped and screened. It will also have suitable pedestrian circulation.

Tr. 84.

Based on the record in this case, the Hearing Examiner concludes that Petitioner has satisfied the general and specific requirements for the special exception it seeks. In sum, the domiciliary care home use proposed by Petitioner should be granted, subject to the conditions set forth in Part V of this report.

V. RECOMMENDATION

Based on the foregoing analysis, I recommend that Petition No. S-2712, seeking a special exception to permit establishment and use of a domiciliary care home on Parcel 359 in Tax Map HT562, on the north side of Olney-Sandy Spring Road, between Prince Phillip Drive and Old Baltimore Road, in Olney Maryland, be GRANTED, with the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and the representations of its counsel identified in this report;
2. The Petitioner must possess, not later than the issuance date of the use and occupancy certificate, valid State of Maryland and County licenses, certificates, and/or registrations that may be required for a domiciliary care home which provides assisted living to the elderly;
3. The maximum allowable number of units (all of which have no kitchen) must not exceed 74, with a maximum of 94 beds.
4. The maximum allowable number of employees on-site at any one time is 30. They will work in three shifts (7:00 AM. to 3:00 PM, 3:00 PM to 11:00 PM, and 11:00 PM to 7:00 AM);

however, staff will arrive at staggered hours between 7:00 AM and 9:00 AM to minimize disruptions.

5. Except in emergencies, deliveries of food and medical supplies are limited to Monday through Friday, 7:00 A.M. to 7:00 PM, and Saturday, 9:00 A.M. to 4:00 PM, and trash pick-ups are limited to Monday through Friday, 7:00 A.M. to 7:00 PM, and Saturday, 9:00 A.M. to 4:00 PM. These time parameters may be reviewed by the Community Liaison Council established pursuant to condition numbered 18 below, if in actual practice, early deliveries and trash pickups are creating undue noise disturbances or traffic hazards. The Board will retain jurisdiction to review this issue and modify the times permitted for deliveries and trash pickups if it determines that the time of the deliveries and pickups is creating a nuisance.

6. Petitioner must provide a 58-foot wide landscape buffer along Olney-Sandy Spring Road (MD Route 108), as well as the other landscaping shown on its final Landscape Plan (Exhibit 52(c)).

7. Before the issuance of a building permit, Petitioner must apply for Preliminary Plan review and recordation of a plat, per Chapter 50 of the Montgomery County Code.

8. At the time of Preliminary Plan, to satisfy the FY 2007-2009 Growth Policy APF test for Policy Area Mobility Review (PAMR), Petitioner must submit a traffic mitigation agreement (to mitigate 25% of site-generated weekday peak-hour trips) for review by MNCPPC Transportation Planning Staff and approval by the Planning Board.

9. At the time of Preliminary Plan, Petitioner must show on the plan the centerline for MD Route 108 and dedicate the land along the property frontage necessary to create a minimum right-of-way width of 75-feet from the centerline of MD Route 108.

10. Petitioner must provide two (2) bike lockers for employees at the facility, the location of which is to be finalized at subdivision. (This is separate from any PAMR requirements that may be imposed as part of the preliminary plan.)

11. At the time of Preliminary Plan, Petitioner must submit to the Planning Board executed copies of the agreements and easements specified below in Conditions 14 c., d. and e. Following approval of the preliminary plan by the Planning Board, copies of those executed documents should also be filed with the Board of Appeals.

12. The proposed development must comply with the conditions of the Preliminary Forest Conservation Plan, dated December 11, 2007, until approval of the Final Forest Conservation Plan by the Planning Board, after which time Petitioner must comply with the terms of the Final Forest Conservation Plan.

13. Petitioner must maintain 45 parking spaces called for in their Site Plan (Exhibit 52(b)), and may not expand or reduce the parking facility without express permission from the Board through modification of this special exception;

14. Petitioner must comply with the terms set forth on pages 11 -12 of its revised Statement of Operations (Exhibit 52(a)), unless modified by the Board of Appeals. These terms include:

- a. Trash receptacles to service the property shall be located within the building in the location shown on the revised special exception plan. There will be no dumpster located on the Property.
- b. The central HVAC equipment will be located on the rooftop of the Sunrise facility no closer than 20 feet from the building edge behind a mansard roof.
- c. The owners of the adjacent property at 2701 Olney Sandy Spring Road (currently Janet and John Ring) have exclusive access and use of the patio area, behind the residence on that property, which encroaches on the Sunrise property. This area is designated "Exclusive Use and Access Area" on the Special Exception Plan (Site Plan), as revised 1/30/08 and is designated "Exclusive Use and Access Area" on the Landscape Plan 1/30/08. An easement providing for such exclusive access and use shall be filed by Sunrise in the Land Records of Montgomery County.

- d. The owners of the adjacent property at 2701 Olney Sandy Spring Road (currently Janet and John Ring) shall be granted an ingress and egress access easement over the Sunrise property. An easement providing for such ingress and egress shall be filed by Sunrise in the Land Records of Montgomery County.
- e. The area designated "Landscape Buffer" on the Special Exception Plan (Site Plan), as revised 1/30/08 [Exhibit 52(b)] and the area designated "Landscape Buffer" on the Landscape Plan, as revised 1/30/08 [Exhibit 52(c)] along the western edge of the Sunrise Property is to be used exclusively as a landscape buffer to provide buffering for the property at 2701 Olney Sandy Spring Road. This area shall consist solely of existing trees and additional plantings, a retaining wall and vinyl privacy fence, as set forth on the Landscape Plan. Minor modifications to the Landscape Buffer may be made by mutual consent of the property owners at 2701 Olney Sandy Spring Road and Sunrise to maintain or improve the buffering effect. An easement so limiting the use of the area shall be filed by Sunrise in the Land Records of Montgomery County.

15. Since the proposed use will require subdivision, in accordance with Zoning Ordinance §59-G-1.21(a)(9)(i), approval of this special exception is conditioned upon subdivision approval by the Planning Board. If changes to the site plan or other plans filed in this case are required at subdivision, Petitioner must file a copy of the revised site and related plans with the Board of Appeals.

16. A sign permit must be obtained for any sign, and a copy of the permit and diagram of the approved sign should be submitted to the Board of Appeals before the sign is posted.

17. Petitioner must insure that noise from its generators, air-conditioning and other equipment does not exceed County standards.

18. Petitioner must create a Community Liaison Council (CLC) to discuss and address issues of concern to Petitioner and/or the community. The CLC shall consist of Petitioner's representative and representatives from the Greater Olney Civic Association (GOCA), Lake Hallowell, Hallowell, and any other civic association or homeowners association within the defined neighborhood wishing to participate. The adjacent neighbors (the Rings and representatives from Shotley Bridge Place, Fort William Drive and Eaglesham Place) must also be invited to participate, and the People's Counsel must be included as an *ex officio* member of the CLC. Meetings must be

held at least twice a year, and minutes must be kept by Petitioner and filed with the Board of Appeals annually.

19. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: March 10, 2008

Respectfully submitted,

Martin L. Grossman
Hearing Examiner